IN THE FAMILY COURT SITTING AT CHESTERFIELD

CASE No: DE16PO0616

Before His Honour Judge Clifford Bellamy

Designated Family Judge for Derby

Re D (A Child: Parental Alienation)

(Judgment handed down on 19 October 2018)

Mr Jason Hadden MBE for the applicant mother

Miss June Venters QC for the respondent father

Mr Anthony Finch for the Children's Guardian

This judgment was delivered in private. The judge has given leave for it to be reported on the strict understanding that (irrespective of what is contained in the judgment) in any report no person other than the advocates or the solicitors instructing them and any other persons identified by name in the judgment itself may be identified by name or location and that in particular the anonymity of the child and the adult members of his family must be strictly preserved.

1. This private law Children Act application relates to a teenage boy, D. D is aged 13. On 23rd November 2016 his mother applied to the court to vary a residence order, originally made in 2008, and for a child arrangements order providing that D should live with her. The father immediately responded by issuing an application for a specific issue order seeking the return of D to his care. D is a party to these proceedings and a children's guardian ('the guardian') has been appointed for him. The applications come before me now for a finding of fact hearing. This is my judgment relating to fact finding issues.

<u>Background history: 2008 to 2012</u>

2. This case has a long history. It is appropriate to set out that history in some detail.
3. The parents' relationship began in or around 2001. At that time they were both living in London.
4. During the Spring of 2004 the father moved to live in Derby. The parents were planning to get married. It was intended that following their marriage they would live in Derby.
5. The parents were married in 2004. The mother soon became pregnant. D was born in 2005.
6. The relationship quickly became unhappy. The mother did not like living in Derby. They separated. According to the father they separated in May 2006. According to the mother it was in September 2005. The mother moved out.
7. Following their separation there was what amounted to a shared care arrangement in respect of D.
8. In February 2008 the mother went abroad. She went with her mother. D stayed in England living with his father. The mother returned to England in May 2008. She had been away for ten weeks.
9. In April 2008, whilst the mother was abroad, the father issued an application for a residence order and a prohibited steps order. Within those proceedings the father made a number of allegations concerning the mother not least of which was that, according to him, the mother was a heavy drinker.
10. When the mother returned from abroad she issued a cross-application.
11. The proceedings were keenly fought. On 1st May 2008 District Judge Douce granted an interim residence order in favour of the father and an order prohibiting the mother from

removing D from his care. That order was followed a week later by an order permitting the mother, in the interim, to have staying contact with D every weekend.

12. The first fully contested hearing took place before Her Honour Judge Bush on 24th June 2008. She made what was in effect an interim shared care order providing that D should live with the father during the week (Monday to Friday) and with the mother at weekends (Friday to Monday).

13. The first problem with that arrangement occurred in July 2008 when the mother failed to return D at the end of contact, claiming that he was unwell. That led to a hearing before District Judge Atkinson on 18th July 2008.

14. The next contested hearing was before His Honour Judge Orrell on 27th August 2008. A transcript of that hearing is available. The father was represented by Mr Alistair MacDonald (as he then was). There are some passages of his cross-examination of the mother which it is appropriate to highlight:

> AM: …you have always, since D was left with his father, wanted to have D back, have you not?
> Mother: Yes.
> AM: Throughout these proceedings it has been your case that D should live primarily with you?
> Mother: Yes.
> AM: It has been your case throughout these proceedings that D would be better cared for by you than his father, has it not?
> Mother: Yes
> AM: It has been your case throughout these proceedings that D is neglected in the care of his father?
> Mother: Sometimes.
> AM: You filed an application on July 14th?
> Mother: Yes.
> AM: Alleging that, did you not?
> Mother: Yes…
> AM: Yes, but ultimately the court endorsed the order of 24th June, did it not?
> Mother: Yes.

15. The next significant hearing took place on 22nd October 2008 before His Honour Judge Jenkins. Once again the mother had failed to return D to the care of his father on time. The father applied for a penal notice to be attached to the order made by Judge Bush on 24th June. The mother sought to vary Judge Bush's order. Judge Jenkins said that the mother 'does not demonstrate a sufficient reason' to do so. One sentence from Judge Jenkins' judgment shines out. He said,

> 'On the face of it this is already a dispute which is going to escalate, or has the potential to escalate and the risk is that D will be damaged by these matters.'

Those words were prescient.

16. The next order of note is an order made by His Honour Judge Orrell on 16th December 2008. Listing the application for a two-day final hearing in April, Judge Orrell included the following recital in his order:

> 'And upon the Court indicating that if the most recent allegations made by the [mother] fail to be made out the Court will consider the making of an order pursuant to S91(14) of the Children Act of its own motion.'

17. The final hearing scheduled to take place in April did not in fact take place until July. That hearing came before Recorder McLaren QC. It is relevant to note that in his judgment he records that he had,

> '46. …urged the parties, even at this late stage, to try to agree on the child's future care notwithstanding all their past problems, but to no avail, despite allowing them a lengthy adjournment for discussion during the day.'

I, too, have urged the parties to try to reach an agreement. My entreaties have fared no better than those of Recorder McLaren QC.

18. In his judgment, the Recorder said that wherever the evidence of the mother and the father conflicted he preferred the father's evidence. Although his assessment of the father was not wholly positive, it was far more positive than his assessment of the mother in respect of whose evidence he made a number of withering comments. He said that,

> '59. …There are serious problems with the mother's evidence when it is tested for consistency. I have been driven to the conclusion that she is determined to say and do what she regards as necessary to "win" this case. She is prepared to say things which she believes will help her cause without regard to the truth. Her counsel, who has said everything that could be said on her behalf, makes the point that if she was to be regarded as making things up then surely she would have made them up to a greater extent than she has now been minded to do. Whilst that comment is correct, in so far as she could have done so had she wished, it does not alter the fact that, in my judgment, her evidence is suspect.'

19. The learned Recorder considered 24 allegations made by the mother. Some involved acts of violence including allegations of rape, slapping, kicking, pulling hair, thumping with a clenched fist and hitting her with a belt. She also alleged an incident in which the father slapped D across the face. With respect to each such allegation, on the schedule of allegations the Recorder wrote: 'Rejected. Father's evidence of denial accepted'

20. Seven weeks after that hearing Recorder McLaren QC conducted a welfare hearing. Once again he was highly critical of the mother. He said,

> '17. It seems to me that her concern to have as much contact as she could was not primarily influenced by her belief of what was in D's best interests but by her desire to make sure that she did all in her power to "win" the impending battle with the father. To some degree she no doubt regarded her ultimately gaining residence as in D's best interests, but that blinkered her approach…'

He went on to say,

> '23. In my earlier judgment I made a number of observations about the veracity of the mother and her eagerness to say whatever was necessary, in her view, to obtain a residence order in her favour. I take the view that, despite her protestations to the contrary, there is a serious risk that, in the future, if awarded residence she would do whatever she could to reduce – if not eliminate – the contact with the father.'

In light of what has happened in recent times, albeit articulated nine years ago, the Recorder's words could be said to have a prophetic quality.

21. On 2nd September 2009 Recorder McLaren QC made a residence order in favour of the father. He ordered that the mother should have alternate weekend staying contact from Friday to Sunday together with additional contact during school holidays.

22. Whilst her application was ongoing in the first instance court, the mother sought leave to appeal the decision of Recorder McLaren QC. Her application for permission to appeal was considered by Wall LJ (as he then was) on 5th March 2010. Her application was refused.

23. The mother made a further application to the court. It was listed for final hearing in November 2010. At some point before that hearing took place it appears that D made a disclosure that he had been sexually abused by the mother. The father did not consider it appropriate to seek a finding of fact hearing to investigate that allegation. However, surprisingly, the mother did consider it appropriate to take that step. Her application came before District Judge Atkinson on 13th October 2010. He said,

> '2. The application before me is to insert into the timetable, inevitably derailing the final hearing, a fact-finding inquiry into alleged disclosures made by the child D, who is five and a half years of age, of sexual abuse by the applicant mother…
> 5. In my judgment this application is nothing more than a further attempt to prolong this litigation and to use the complaint that was made quite properly by father to Social Services…
> 6. It is my firm judgment that what D requires is an end to this litigation. The decision of father that the disclosure, not repeated to anyone else, of a five year old should [not] be taken any further by way of investigation is a prudent and reasonable one. The decision of Social Services that mother is not to be excluded from contact by the fact of these unsupported allegations again is reasonable. In my judgment simply to try to use this as a further way of prolonging the litigation is wholly wrong and against the interests of the child whose welfare is of course paramount.'

24. That was not an end to the litigation. In July 2011 there was a further contested hearing, this time before His Honour Judge Orrell. The mother sought a shared care arrangement. The judge considered the chronological history of the case. He said that in his view,

> '19. …the judgment of Mr Recorder McLaren is the starting point in the instant case. I distil three important findings from that judgment: (i) D requires stability and routine; (ii) any increase in contact is to be by agreement between the parents and (iii) the mother has a strong desire to win the dispute and this on occasions has clouded her judgment.'

25. The judge went on to note that D had been examined by Dr S who had diagnosed autism spectrum disorder. He concluded that it was appropriate to make some relatively minor amendments to the existing contact order that was then in existence. That apart, he dismissed the mother's application and also a cross-application made by the father. He varied the contact order to include additional mid-week contact alternate Wednesdays from 5.30pm to 6.30pm to enable the mother to take D out for a meal. He considered but declined to make an order under s.91(14) of the Children act 1989. His judgment was given on 25th July 2011.

26. For a second time the mother applied to the Court of Appeal for permission to appeal. Her application was refused by Black LJ (as she then was) on 27th February 2012.

Background history from 2016

27. The refusal of the mother's application for permission to appeal brought an end to litigation that had been ongoing for almost four years since April 2008. There was then a respite from litigation for the next four and a half years.

2015

28. The father accepts that at some point in 2015 D began asking to see more of his mother. In a written statement made in December 2016, the father says that,

> '6. The Respondent relocated [to the East Midlands] and has regular contact with D since 2008 in accordance with the various orders made. In the last year, D has started to request more time with the respondent (and I believe this was at the encouragement of the Respondent). I was anxious to manage the changes for D because he is on the Autistic spectrum and therefore any change has to be planned and managed carefully. Looking back, I think over the last year, the Respondent has been working on D trying to destabilise his placement with me. I worry that the Respondent does not appreciate just how vulnerable and open to suggestion our

son is and her behaviour in the last six months has shown a complete disregard for D's welfare.'

2016

29. During those litigation-free years, as a result of the orders made by Recorder McLaren QC and Judge Orrell, there was in place a settled arrangement for contact which enabled D regularly to spend time with his mother.

30. On or around the 1st August 2016 the mother took D to be seen by a GP. It appears that this was not a routine NHS appointment. Following the appointment the GP wrote a 'Confidential Private Patient Referral letter'. The letter was to be sent to a consultant psychiatrist. The letter notes that in April 2010 D was diagnosed as suffering from Autistic spectrum disorder'. The letter also notes that there had been local authority involvement in June 2010 and that a MARAC assessment had been completed. So far as is relevant, the letter reads,

> 'This 11 year old boy was brought to clinic by his mother. The background is that the parents divorced several years ago. Following that, custody of D is shared between his father and mother with his father having him most of the term time and sharing holidays equally.
> Mum is concerned that D is feeling down and depressed most days when he comes to see her. He has told her that he has frequent arguments with his dad. *There has been no violence* (emphasis supplied). D gets upset when his dad mentions his mum in a derogatory way. Mother is concerned as recently he has expressed some occasional feeling of self harm or suicidal thoughts.
> I spoke with D today alone and he confirms this history…'

31. In September 2016 D changed school moving from a fee paying school to a state school. Some two weeks after changing school the mother retained D at the end of a scheduled weekend's contact. At the mother's request the father agreed to a change in the arrangements that had been in place for the previous seven years (since an order dated 2nd September 2009). It was agreed that D should spend 8 nights with his father followed by 6 nights with his mother. That change was implemented immediately.

32. On 16th November the school completed a 'Children's Social Care Child Referral Form'. So far as is material, it said that,

> 'Dad verbally abusive towards Staff members. Custody arrangements that D is unhappy with. D expresses feelings of not being safe with his dad. On talking with him today "there will be shouting, heartbreak, interrogation, horrible things coming my way and he may slap me", if he goes back to Dad. Arrangements made for D to be collected by Mum and advice given to her. Unpleasantness yesterday

evening – Dad went to Mum's house demanding to take D. Mum managed to keep D safe…
There has been a suggestion that Dad has been physically abusive to members of Staff at the school where D was on roll'.

33. On 18th November 2016 the Assistant Designated Safeguarding Lead at D's new school wrote a letter 'To whom it may concern'. In it, she said that,

> 'On speaking with D independently, he expresses concerns about staying with his father.
> D was spoken to on the 16th November by the Deputy Head and Designated Safeguarding Lead and by the Assistant Designated Safeguarding Lead. At this time D expressed a desire to stay with his mother.
> To comply with D's wishes, the school have requested that mother collect D daily from school – keeping D in a safe place until she is able to arrive onto school premises and be escorted by her.
> The school have telephoned and logged a concern at the Children and Young People Department with the local authority. This telephone call was made on 16th November 2016. The duty officer was spoken to.
> D is showing signs of anxiety and stress and this is manifesting itself in obsessive compulsive behaviour. The SENCo in school reports excessive handwashing.
> D is also seen in school by the in school Counsellor.
> D is on the SEND register at school, receiving 21 hours of support fortnightly. His individual education plan is attached. D has been diagnosed as having ASD.'

34. D should have returned to his father's care on 18th November. The mother did not return him. The father did not have contact again until April 2017.

35. The mother issued her present application on 23rd November 2016. In her application form she said that,

> '…The child's school…has raised some concerns with the child (child wishes to remain with mother and is showing signs of anxiety and stress) and informed the mother the child should remain in her care. The child's school has also logged the concerns with the Children and Young People's department with the Local Authority. The mother has therefore kept the child in her care and now requires the court to vary the previous order so the child remains in her care…'

36. The mother also filed a form C1A *Allegations of harm and domestic violence (Supplemental information form)*. The mother alleged both physical and emotional abuse by the father towards D. She said, 'Child has disclosed to school and mother he has been hit by father, his ear has been pulled and twisted. Child has informed mother on numerous occasions.' She went on to say, 'Child has disclosed that he is unhappy residing with father, has disclosed he wishes to kill himself by putting knife to kneck (sic), disclosed he will run away.'

37. On page 5 of the form C1A, under the heading 'Other concerns about your child(ren), the mother states,

> 'Child is unhappy residing with the father and has disclosed that he is being hit by his father. Child has also on a numerous number of occasions indicated that he wishes to run away from father's residence and also indicating that he wishes to jump out of the balcony whilst residing with the father. The child is clearly distressed whilst residing with father and he has also confirmed he wishes to reside with mother.'

38. On 30th November 2016 the father issued a cross-application for a specific issue order seeking 'a return of my son D to my care as he has been retained by my former wife in breach of a Residence Order made in 2011 in my favour.' He made the point that D had lived with him since he was 4 years old. The father requested an urgent hearing, saying

> 'The reason for the urgency is I have the benefit of a Residence Order in respect of my son D. He should have been returned to my care on Tuesday 22nd [that should say 15th] November. Instead the Respondent collected D from school. I believe that the Respondent is putting extreme pressure on D who is a vulnerable child by virtue of being on the autistic spectrum. I believe this has been going on for some time and indeed in the last few months since the Respondent has been putting D under pressure and since we tried a new [shared care] arrangement, D has displayed extreme signs of stress and anxiety including OCD behaviour at school. Unfortunately I believe that the school have been fooled by the Respondent.'

39. The father went on to explain that,

> 'There was a trial arrangement in September of this year where D would spend more time with the Respondent, he would spend six nights with her and then eight nights with me. This worked for approximately seven weeks and then the Respondent unilaterally withheld D claiming he wanted to live with her full time. The Respondent has in fact confirmed to me that if I sign a Clean Break Court Order I can have unrestricted contact to D. My fear is that the Respondent is manipulating D and unless urgent action is taken D is going to be subjected to parental alienation.'

40. The parents' cross-applications were listed for a case management hearing before District Judge Douce on 7th December 2016. He made D a party to the applications and appointed an officer of Cafcass to act as Children's Guardian for him.

41. On 8th December the Designated Safeguarding lead at D's school wrote a letter 'To whom it may concern'. He said,

> 'D has disclosed to school that Dad displays intimidating behaviour. D uses vocabulary such as "shouts at me", "interrogates me", "always argues, "worried Dad will hit me". On day of disclosure D said if I go home today [There will be] shouting, heartbreak, interrogation, horrible things will be coming my way, he may slap me…

D was asked whether he wanted to go home with dad – he said he didn't. He expressed concerns that "dad may take me by force from the grounds" or "will wait by flats and persuade me to visit". School, following these concerns, made arrangements for mother to collect D from school.'

2017

42. Throughout 2017 there were several case management hearings. The orders made included an order that a psychologist should be instructed to undertake 'a global psychological assessment of the parties'.

43. An order dated 18th January 2017contained a number of recitals, including the following:

> 'And Upon the Mother informing the Court that she is not opposed to direct contact in principle and supports the Guardian in her work with the child, D, in encouraging him to see his father.
> And upon the Guardian and the child's solicitor having visited since the last hearing on 22/12/16 and 13/1/17 and D confirming that he does not wish to live with or see his father…
> And upon there being no agreement by the parents as to [with] whom D should live, it is accepted that he will continue living with the Mother in advance of the next hearing.'

44. In April 2017 an arrangement was made for the father to have contact with D once a week.

45. At a hearing on 18th July 2017 an order was made by consent that D should continue to live with his mother pending the final hearing which was listed to take place on 11th September 2017. The order set out detailed agreed arrangements for D to spend time with his father in the period leading up to the final hearing. From 27th July this was to take the form of staying contact leading up to what amounted to a shared care arrangement, D to spend one week with his mother and the next week with his father on an alternating basis. This arrangement was to come into effect from 27th October 2017.

46. Once again the order contained several recitals, the first two of which read:

> 'Upon it being agreed that D had been attending contact as arranged directly between the parents since mid-March 2017 and him having attended weekly Wednesday night contacts and Saturday day time contact for up to 14 hours at a time

And upon the Mother making a proposal for an increase in D's contact with his Father that will allow the arrangement to return to the parents sharing the care of D by the conclusion of the school half-term holidays in October 2017.'

47. The final hearing was subsequently vacated and relisted before His Honour Judge Bennett on 6th October with a time estimate of 3 days.

48. The next case management hearing took place on 27th September. The order notes that,

> 'D has been spending increasing periods of time with his Father since the hearing in July 2017. However, he continues to display oppositional behaviour towards his Father.'

49. D reports that on 30th November 2017 there was an incident in which the father struck him across the throat. The father denies that allegation. I deal with this allegation in detail later in this judgment.

50. At a further case management hearing before District Judge Bond on 12th December 2017 the final hearing, then listed to take place on 21st and 22nd February, was vacated and re-listed on 4th April with a time estimate of 3 days. Interim arrangements were agreed as follows:

> 'a. Between now and the final hearing D will live with his mother from Friday afternoon until the morning of the following Friday and will then live with the father from the afternoon of that Friday until the following Friday morning
> b. Holidays to be shared equally.'

51. The mother's solicitor informed the judge that contact was going well. In her oral evidence the mother acknowledged that she had given her solicitor misleading instructions.

2018

52. D alleges that during the weekend of 19th/21st January 2018 he was assaulted by his father. The matter was reported to Children's Social Care on 26th January. Later that day D underwent a child protection medical examination. The father has not had any contact with D, direct or indirect, since 21st January.

53. On 15th February D undertook a video-recorded ABE interview.

54. On 26th February the father was interviewed under caution.

55. On 27th February, there was a further case management hearing before District Judge Bond. Once again the final hearing vacated. The applications were listed for a review hearing on 12th April. This was the first hearing I had presided over.

56. The order made on 12th April sets out the position of all three parties. The mother's position was that she:

> 'opposes the listing of a fact-finding hearing. She informed the court through her counsel that she did not wish to make any allegations of the First Respondent. The Applicant wishes to implement a 50/50 shared care arrangements with the support of a systemic family therapist. She is prepared to engage the systemic family therapist immediately. Having heard the children's guardian does not support overnight contact in the interim, the Applicant supports contact taking place during the day on Saturdays and Sundays every other week, but is open to considering other proposals or suggestions.'

57. The father's position was that he,

> 'requires a Fact Finding hearing to determine (i) the allegations made by D in January 2018 and which are the subject of a social services investigation and a police investigation (ii) to determine whether Mother has colluded with D causing D to make false allegations against the father. The children's guardian having spoken with the allocated social worker about the possibility of resuming contact on an interim basis and thereafter proposing this to the First Respondent, the Father has expressed caution. Whilst the First Respondent very much wants to have contact with D as soon as possible he is concerned that to arrange interim contact before a determination of the issues listed for Fact Finding could cause D to be under pressure. It follows the First Respondent does not support interim unsupervised contact taking place, but will consider arrangements for supervised contact in due course prior to the review hearing.'

58. The guardian's position was that,

> 'she did not support a fact finding hearing following the mother's position and following her assessment of the state of the current evidence and the unlikelihood of the Court making any findings sought based on that evidence. She remains concerned that D is not currently seeing his father. She supports the resumption of contact, starting with indirect contact and building to short periods of direct contact, but this should not be overnight and needs to be managed sensitively. She would support this contact provided it would not interfere with the fact find process and the police investigation. The Guardian saw D on Tuesday 10th April, he does not wish to see his father at the moment. D's Solicitor remains of the view that he is not competent to provide instructions.'

59. Discussion took place at that hearing concerning the issue of interim contact. The father declined to have unsupervised contact fearing that, as he would put it, further untrue allegations may be made against him either by D or by the mother. He requested supervised contact. It was agreed that the guardian would investigate contact resources available within the community. Nothing materialised from those discussions. It is not known what steps, if any, the guardian took.

60. At the hearing on 12th April I ordered the local authority to undertake an investigation of D's circumstances pursuant to the provisions of s.37(1) of the Children Act 1989.

61. On 9th May I allowed an application by D's solicitor for permission to instruct a consultant paediatrician to undertake a paediatric overview of the records relating to the injuries allegedly sustained by D during the weekend of 19th to 21st January. It was agreed that Dr Russell Austin be instructed.
62. On 7th June 2018 the father was informed by the police that the decision had been taken not to commence criminal proceedings against him.
63. On 30th August 2018 I allowed an application by the father for an order that D should give evidence at this finding of fact hearing. The application was opposed both by the mother and by the guardian. I also gave directions for the appointment of an intermediary.

D's relationship with his father

64. D lived primarily with his father from 2008 until 2016. Although D is now critical of the care he received from his father during those years, the evidence in the papers before me suggest that prior to the summer of 2016 there were no allegations of physical abuse, ill-treatment or inadequate care.
65. Miss Venters QC explored with D the nature of his relationship with his father. D agreed that he had spoken on a phone-in radio programme on Father's Day. He could not remember which year though it appears that it was probably no earlier than 2016. Miss Venters asked him what he had said about his father. D replied, 'I can't remember most of what I said, but I think I said that he's a really good dad'.
66. Miss Venters told D that his father says they had a lot of fun times together when he was growing up. D said, 'well, we did have some fun times'.
67. Miss Venters showed D some family photographs of himself, his father and, in some photographs, his father's partner Ms A. One of the photographs was taken when they went to the BBC studios in Birmingham in 2017. Another was taken on a visit to a dinosaur exhibition. Others were taken when they went sailing, when they went to a butterfly centre and when they had been to see some birds of prey. D also talked about holidays abroad. D agreed that he had had good times when living with his father.
68. Miss Venters asked D how he had got on with his father's partner. He said, 'when I first met her she was really nice…when I first met her we did get on well for a while, yes. We got on well, I can remember that.' Miss Venters asked him what had caused that to change. D replied,

> ‘When things, like what happened on Saturday, on the weekend in January…when dad threw me onto the coffee table. Just for her to say, “mind my plant”. It made me feel more like she didn’t even care if I got hurt or not’.

69. Miss Venters reminded D that when he had spoken to the social worker, Ms H, about the coffee table incident, he told her he had hurt his legs on the corner of the coffee table. She asked him whether that was right. He said, ‘They weren’t hurt, no, I don’t think so. It was just my shoulder, my neck, and just the back of my shoulder as well’.

70. Miss Venters asked D whether he had told the psychologist, Mr Spooner, that he felt like ‘clocking dad one on the jaw’. He agreed he had:

> JV: You told Darren that you’ve always wanted to hit your dad; did you say that to Darren?
> D: Yes, I did, and again because my dad had been hitting me for a long time, over the course of those years my dad had been hitting me…So, I just thought of, like, fighting back. That’s why I said that.
> JV: You told Darren one time you were going to smash his drinking glass round his head: did you say that to Darren?
> D: Yes, and again for the same reasons. I said this out of anger.

71. D had also told Mr Spooner that his dad drinks alcohol before he drives, that this had led to road traffic accidents, that on one occasion his father had almost got involved in a fight. This disclosure is curious. The father does have a conviction for drink-driving. The father thought D was unaware of this. It appears that he does know about it. As the father has not told him, that begs the question about how D came by that information.

72. There is another important episode which D raised with Mr Spooner but which he does not appear to have raised with anyone else:

> JV: D you told Darren Spooner that your dad tried to strangle you with a belt. Your dad says he’s never done that; is your dad right or wrong about that?
> D: He’s wrong.
> JV: D, you told Darren Spooner that your dad told you to kill yourself. Your dad says he didn’t say that; is your dad right or wrong about that?
> D: He was wrong. He told me to – well, he egged me on to kill myself after an argument we had had. Basically, I said to him, “I (inaudible) Dad, sometimes I feel like killing myself”, and then he said, “Do you know what? Just go and do it”. He said, “Go and kill yourself, prove it to me”. It’s like he didn’t even care that I was feeling that way.’

73. There is no evidence of any allegations of physical abuse prior to the commencement of these proceedings. On the contrary, the evidence suggests a very positive relationship between father and son prior to September 2016.

74. D gave evidence on 9th October. As advised by the intermediary, there were regular breaks. During a break towards the end of the day, D wrote a short statement which the intermediary read out to the court. It reads,

> 'My dad has been a good dad at times, like when he would take me to see my friends, when I would stay with my cousin, but I am here right now because of what he did to me, what he has done to me. I have been given heartache for years, and I can't state that enough. I just want a normal life, living in happiness with mum. I cannot go back to my father's. I was promised by my mum and the police officer that dad wouldn't hurt me ever again. Now, I am here in court because he hurt me bad. Why can't I just have a life that isn't based on court and stress? I just want a life that I can live not live in fear from, please.'

75. At the very end of his evidence, when all questioning was complete, D asked 'Your Honour, sorry, do you mind if I just say one last thing please?' I agreed. This is what he said:

> 'Okay, there's a student in my school, and I won't name her just for her sake, but she wants to change her gender at some point, she wants to become a boy, and our school accepts that, so at PE she gets changed privately, and then she joins us boys at PE. And we accept that, and I love that in our school it doesn't just show how diverse our school is, and accepting it, it shows that the world has come to a certain point.
> But before I digress into another topic about the world, I just want to say this: I've had a bit of an epiphany, that if that girl can make a decision to reassign her gender some day, a decision that's so complex, so pivotal, then how come I can't even just decide where I feel safe and happy? Who I feel will help me out, and just love me in the way my mum does.
> I'm – this is not just to say – this is not just an attack on my father. I'm saying this now because, well, if there's something as big as what that girl wants, I don't feel that this is big, but I just want to be able to feel safe and happy knowing that I don't have to worry about courts, or what my father might do next, because I don't want to be living under what my dad threatens, like, how he threatened to destroy, to kill me and my mother.
> I don't want to be living under his threats, or living in fear. I'm not asking for much, but please, if a decision like that can be made by someone to reassign their own gender, something that is that big, then asking for a life with somebody, not just somebody but a family that *(inaudible)*, not that big. I end it at that. Thank you for listening to me.'

Finding of fact

76. That is the background that leads to this finding of fact hearing. The allegations which form the basis of this finding of fact hearing are set out in two separate schedules. The first sets out findings sought by the guardian that the father has physically abused D. The second sets out findings sought by the father that the mother has systematically alienated D from him. I shall deal with the schedules in that order. I begin by setting out

the relevant law. There are further issues of law that will need to be addressed when I move on to consider the second schedule.

The law

Burden and standard of proof

77. The approach of the court is very clear. With respect to any particular finding sought, the burden of proof rests with the party who seeks that finding. In this case that means that the burden of proving the findings sought by the guardian rests with the guardian and the burden of proving the findings sought by the father rests with the father. In both cases the standard of proof is the civil standard, that is the balance of probabilities. In *Re B (Children)(Fc)* [2008] UKHL 35. Baroness Hale made it clear that this means 'the simple balance of probabilities, neither more nor less.'

Evidence

78. Findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation

Expert evidence

79. Expert evidence does not stand alone. The court is under a duty to evaluate the totality of the evidence Whilst appropriate attention must be paid to the opinion of experts, those opinions need to be considered in the context of all of the other evidence. Ultimately, it is for the judge to determine, having considered the totality of the evidence, whether the party upon whom the burden of proof rests has discharged that burden.

Truth and lies

80. In this case there are factual issues that are in dispute. It is appropriate to remind myself of the point made by Charles J in *A County Council v K, D and L [2005] 1 FLR 851* that, following the decision in *R v Lucas (Ruth) [1981] QB 720*, 'a conclusion that a person is lying or telling the truth about point A does not mean that he is lying or telling the truth about point B….'

The binary approach

81. It is also appropriate to note the point made by Lord Hoffman in *Re B (Children)(FC)* at §2 that,

> 'If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.'

<u>The guardian's schedule of findings</u>

82. It is the mother's case that D has disclosed to her that he has been physically abused by his father. If the father has physically abused D, as alleged, that may explain why the relationship between D and his father broke down and may give some insight into the estrangement that has occurred between father and son. Alternatively, if the father has not physically abused D, if D's allegations are false, that raises serious questions about why it is that D has made these allegations. Before there can be any realistic attempt at restoring the relationship between father and son it is clearly important that these issues should be investigated and ruled upon by the court.

83. Notwithstanding the above points, whilst the father requested the court to give directions for a finding of fact hearing the mother opposed that request. I was satisfied that a finding of fact hearing was both necessary and appropriate. I therefore took the unusual step of inviting the guardian to serve a schedule of findings based upon the disclosures made by D.

84. The guardian's schedule seeks findings in respect of six alleged incidents of violence by the father towards D. In respect of only one of those allegations is there independent evidence which, if accepted, would amount to corroboration, and that relates to the final allegation. Of equal note is that D has made other allegations which have not been included in the schedule prepared on behalf of the guardian. As those are issues which, potentially, are relevant to the assessment of D's credibility, it is appropriate to set them out first.

85. Those allegations are to be found in the report prepared by the jointly instructed psychologist, Mr Spooner. In his main report he notes that,

> '4. D fully engaged with his assessment. He made good eye contact and he was emotionally present rather than detached or dissociated.

5. D presented with what seemed like a pre-prepared and well-rehearsed script of all the things he wanted to tell me about his father. He took every opportunity to denigrate him, his family and his partner. Each time I attempted to ask him about issues not related to his father, such as school, hobbies and so on, he quickly derailed himself and continued on his frivolous campaign of denigration.
6. He made numerous allegations that he had not made anywhere else, such as his father repeatedly having road accidents while drunk with D in the car, putting a belt around his throat and nearly killing him, having sex with school children and the like. He was not distressed at any time, even when telling me about his father's alleged attempted murder of him. He told me that he really believed his father would kill him and get rid of his body as he tightened the belt around his neck so tightly he couldn't breathe, yet he said this in a very matter of fact way. Surely if his father had attempted to murder him and dispose of his body (which is what D alleged) then he would demonstrate some evidence of trauma when recalling this?'

86. In his oral evidence, Mr Spooner said that D

'was as rejecting of a parent as any child I've met, and it may well be the case that he has become more strident over time, but again, he was clear with me that his father had always been an abusive neglectful parent.'

87. Later in his report, Mr Spooner refers to other allegations made by D which are also omitted from the schedule of allegations and in respect of which no complaint was made by D prior to Mr Spooner being instructed:

'34. I asked D to tell me about how life was when he was living with his dad. He then launched into a tirade of denigration. He said "it was absolute hell. The only good times I had were when dad was sober or with other family members. He thinks I'm stupid and he drinks before he drives. There were two encounters and he nearly hit a car and swerved and he started cursing. When he's not drinking he's on his phone in the car texting."
35. I interrupted D and asked him what his father drank. He said he didn't know then thought for a second or two and said "at a party he had a few shots of brandy. He always drinks wine most nights but mum only drinks wine two nights a week. Once at a party he was getting drunk."
36. I asked him how he knew his dad was getting drunk and he said "he was drowsy and had squinty eyes. I told him I'd tell mum but normally he'll tell me to keep my mouth shut.
37. "One time he hit a car, he was being an idiot. Another time in the car he nearly got into a fight and another time he hit a truck. The police were involved."
38. I mentioned to D that he said he doesn't get shouted at and hit when he is with his mum, meaning that he does when he is with his dad? He said "one time when we got home he grabbed my shoulder and said get the f**k here and he threw me on the bed. He took his belt off and wrapped it round my neck and I thought he'd kill me. I never told anyone because I thought he'd kill me. He said 'if you really love your mum [you] won't tell her'. He said he'd harm her and I've always been concerned he'll harm her. After he tried to kill me with the belt I was screaming my head off and he tightened it until I couldn't breathe."

39. He then changed tack and said "he dragged me off my mum every time I saw her. Once he did even tell me to kill myself. He was asking about mum's sex life, 'can you hear her having orgasms?' I heard her saying 'don't you ever dare ask him questions like that again, if you do you see what happens'. One time I got back and he had a go at me for telling her."
40. D then spontaneously changed tack again. He said "he used to keep handcuffs by his bed and he had a pair of knickers from a girl at high school that he slept with. I never knew what the handcuffs were for, but he told me. He always talks about women in a bad sense. He kept telling me who he'd slept with. Heck, he even told me he slept with a friend of mine. No, well, a friend of his."
41. By this point in the assessment it was clear that D was making the most of my receptive ear. He continued "one time he hit me in the garden and dragged me by my arm up the stone steps and gave me a right smack over the face just like that [he imitated punching himself in the face]. I was in shock…
44. D then returned to his allegation that his dad strangled him with his belt. He said "if I hadn't screamed he would have tightened the belt and killed me and got rid of my body. He said bros before hoes to his girlfriend and she got really upset."'

88. D went on to indicate that this kind of violence was not new. According to Mr Spooner,

> '47. D then returned to his allegations of physical abuse. He said "whenever he would hit me, the first time was when I was four or five, he hit me over tiny little things. My mum never laid a hand on me in a wrong way. He smacks me around the face and it's put me into shock. I was silent and ran and curled up into a ball on the couch, I was really pouting. My aunties never stuck up for me, they're demented crows. Absolute cows, and they always take his side."'

89. D spoke of feelings of anger and violence towards his father. He said that on one occasion,

> '48. …I felt like clocking him one on the jaw. I've always wanted to hit him. One time I was going to smash his drinking glass round his head.'

90. He also spoke about suicidal thoughts. He said,

> '49. …I've had suicidal thoughts before and I got a knife and told my mum if I can't live with her I don't want to live. Mum was bawling her eyes out saying 'please my son, don't'. So I lowered the knife from my throat and she hugged me for nearly five minutes. We all went to bed shaking and I threw up a bit."…
> '55. He then tangentially said "it was never a suicidal act but I did cut myself once. I told dad I'd self-harmed myself once because I wanted to live with mum. I bled out quite a lot.
> 56. "I've never told anyone what I've told you because I thought he'd find out and kill me. Mum, she's everything. She's perfect in every sense.'

91. Mr Spooner notes that,

> ‘67. At the end of his assessment I asked D if there was anything else he wanted to say. He said "life right now is good but my dad is harassing me. He can piss off and leave me alone. Basically he's a parasite. How can he still think he's my father after everything he's done? T is more of a father figure than he ever was and T is better to mum that he ever was. He will stand by me as a kid. He's a good person to turn to. Dad was never a match for T and he'll never be in my good books again."’

T is the mother’s partner. He has not made any contribution to the evidence at this hearing. He has not filed a statement. He has not given oral evidence. Save that it appears that the local authority has carried out basic safeguarding checks which have not revealed anything untoward, little is known about him or about his relationship with D.

92. Having set out those issues, I now turn to the allegations contained in the guardian’s schedule.

First allegation: *The First Respondent father chopped into D’s neck using the side of his hand whilst both were fighting over a remote control.*

93. This incident is said to have occurred at the father’s flat on Sunday 30th November 2017. Apart from the father and D, the only other person present was the father’s partner Ms A. Though referred to in D’s ABE interview on 15th February 2018, this incident had not previously been the subject of a complaint either to the local authority or to the police.

94. In his ABE interview D described this incident as follows:

> ‘Some time in December 2017 we were fighting over the remote control, he was just wanting like give it to me because he has this thing like if I buy something its mine even if it belongs to you it’s mine everything like belongs to him. I was like can I watch something. I was tired I just wanted to watch something I had had a busy day and then at that moment with his free hand, struggling a bit, with his free hand with the side part here chopped into my neck. I mentioned this before and I told my mum about it and she said don’t even tell school. The chop hurt badly it was so quick that it kind of brought a bit of shock I lost breath I was gasping a bit and then I [ran] to the thingy bathroom crying because it hurt so much. I started retching because I thought [I] was going to vomit and I had an ache right here where my Adam’s apple is right there the chop was quick but it was painful and then afterwards he didn’t even say sorry, he was silent he was busy watching snooker, he was flicking through the channels.’

95. The account given in his oral evidence was not entirely consistent with the account given in his ABE interview. He said that he had been holding the television remote control handset. He picked it up because he wanted to flick through the channels to see what was on. His father wanted to watch snooker. He didn’t ask D for the remote

control, he simply tried to snatch it off him. D denies standing in front of his father. He denies that he kept deliberately falling onto his father. He denies trying to stop his father from watching the television.

96. Ms A was in the room when this happened. She says that D called his father 'a piece of fuck'. He said, 'I don't think I said that. I can't remember at least. The first I remember is him hitting me and I was crying a little bit.' Later he said, 'I remember swearing at him'.

97. The father says that when he asked D for the remote control D began to misbehave. He stood in between the father and the television. D put his face close up to his. The father repeatedly asked him to stop. D kept trying to fall onto him to obstruct his view. He kept putting his arms up to prevent D from falling on to him. D then said that his father had hurt him on the throat. He became angry. He called the father 'a piece of fuck'.

98. The father's first written account of this incident is in a statement made in August 2018. After D's bad language he told D that he should apologise to Ms A. He refused. The father told him to go to his bedroom. Eventually he did. A few minutes later he returned and apologised. He then sat down with the father and Ms A. They watched a film together. The father goes on to say,

> '12. Although…D had complained of being hurt when he fell on my forearm, I did not believe that D had actually been hurt. I did, however, feel that, in return for the apologies he had made to both Ms A and I, it was only right for me to apologise to D. Also, I was actually quite impressed to see that D had been reflecting on his behaviour and was then willing to return to us both and apologise about that.'

99. When interviewed by the police the father produced a pre-prepared statement. He did not deal with this incident in that statement. The interview then proceeded as a 'no comment' interview. Although there is only a precis of the questions asked of him in interview, it does not appear that he was asked about this incident. In his oral evidence the father denied that he had struck D across the throat. He did not accept that anything had happened to cause D to retch or gasp. He accepts that sometimes he and D shout at each other. He did not accept that they swear at each other. There were times, and this was one, where D looked for an argument.

100. Ms A has been in a relationship with the father since 2016. They live separately. Both have their own apartment. Their apartments are very close by. They stay overnight with each other from time to time. Since she has been in a relationship with the father Ms A believes she has established a very good and friendly relationship with D.

101. On 30th November 2017, when she returned home from work, she went to the father's apartment for a meal. She says they ate in the living room sitting on the sofa whilst watching television. After a while the father asked D to pass him the remote control handset. D was unhappy. He wanted to continue to watch the same programme. D stood up, walked over to his father and stood directly over him trying to obstruct him from watching the television. He put his face very close to his father's face. He was using bad language. He called his father 'a piece of fuck'. He was trying to start an argument. Ms A tried to calm him down. She told him his behaviour was unacceptable.

102. In her oral evidence Ms A said that she had never seen the father hit D. On this particular occasion D had clearly been trying to get a reaction from his father. He was trying to intimidate him. She tried to calm him down. His father told him to apologise. He didn't apologise straight away. He went to his room. He returned a few minutes later. He apologised. The three of them watched the television together.

103. The day after this incident the mother sent an email to the father. She said,

> 'D has just arrived home. He is very emotional and angry. He said yesterday you hit him in the throat. He then swore at you you swore back. You called each other 'piece of fuck' He said you then told him you didn't want him around but when he tried to leave to come to mine you threatened him. He said you forced him to apologise to you and your girlfriend even though you had hit him and swore at him.
> He has been with you for a week it kind of makes me question what goes on between you two. I am absolutely disgusted and shocked if that's how you carry on with each other. D never behaves like this here nor do I have the need to hit him. Sort things out between yourself and D. I'm not writing this email to undermine you but to tell you how it's affected him. Please don't let this happen again I don't want D to disrespect you but you need to tackle things regarding our son a bit better. He is coming into his teens and things will get tough but the rest depends on how we deal with him as parents. In the past school got involved quite heavily. I don't want history repeating again. He said he is going to tell the deputy head of this incident and I have warned him not to do so. I have promised him we will deal with this matter together which includes you too. Please don't let this happen again.'

104. This email was sent on 1st December. The incident complained of occurred on 30th November. The evidence suggests that D would speak to his mother from time to time whilst staying with his father. There is no evidence that he contacted her on 30th November to report this incident. He did not report it to his mother until he returned home the next day.

105. During this hearing the alleged blow to D's neck has on occasions been referred to as a 'karate chop'. If this incident was as forceful as that description implies, one might

have expected there to have been some visible evidence of this event. There is none. There is no suggestion that it caused any injury, not even a red mark. The mother does not claim to have seen any injury or mark when D returned home the next day. This alleged incident did not lead to a referral to Children's Social Care or to the police. D was not seen by a doctor. There is no medical evidence. There are no photographs. So far as this incident is concerned, the only evidence comes from D, the father and Ms A.

106. The remaining matters are all said to have occurred during the weekend of 19th-21st January 2018. It is appropriate to consider the first four of those allegations together. The final allegation, which is also said to have occurred during that same weekend, is the only allegation in respect of which there is independent evidence. I shall deal with that allegation separately.

Second allegation: *The Respondent father physically assaulted D by pushing or hitting D with the heel of his hand to D's left eye causing it to be swollen and dark.*

Third allegation: *The Respondent father physically assaulted D by grabbing D by the arm and twisting it and pushing his head and face causing pain.*

Fourth allegation: *The Respondent father physically assaulted D by grabbing him by his left arm and bending it hard behind his right shoulder.*

Fifth allegation: *The father continued to pull D's arm until D felt a pop. This caused D to scream and cry.*

D's evidence

107. In his ABE interview D said that on Friday 19th January his father hit him in the eye. He does not give any context for this. He said that he and his father 'are always arguing'. It happens so often that he forgets what they were arguing about. He told his father he had had enough and that he was going to his mum's. He said that,

> 'before I could even unlock the door he grabbed me by my arm and he pulled me back into the living room. That is when he twisted my arm and pushed my head to the ground he was stretching my neck at the same time and he kept on asking me "are you going to do that again, are you going to do that again? And as he was asking he was pulling my arm up even more [tightly] and at that point I felt a pop. I knew I didn't dislocate my arm but it hurt and I felt that pop. I started screaming for him to get off me. I just kept on screaming and screaming. He probably thought I was making too much noise so he let me go. I ran to my room and I cried. I cried so much because it was so painful. The pain carried on for the next few days as well and then that was absolutely horrible and then on another occasion during the weekend, I can't remember its starting to fade a bit, I was locking up my dad's flat.

> I think we were going to my grandma's yeah because normally we go to my grandmother's on the weekend to go for a meal or something. I was locking up the flat and my dad was already at the car and then I got downstairs and then I wanted to talk to him, I was angry about what had happened. I didn't like it one bit.'

108. His father then accused him of scratching his car. D then ran off. He ran to his mum's house. There was no-one at home. He went back to his father's flat.
109. The trigger for all of this appears to have been D's belief that his father had called his mother 'the devil'. D had written a poem at school. The poem was to be published. He was awarded a certificate for his talent for writing. His mother took a photograph of the certificate and sent it to the father by WhatsApp. When D arrived at his father's flat his father showed him the certificate. D said, 'So mum sent it to you then'. According to D, his father replied, 'No, the devil sends messages, son, in many ways'. D interpreted this as the father calling his mother 'the devil'. He was upset and angry.
110. In his oral evidence D stood by his allegation that his father had hit him. He said, 'when he hit me it came off my nose and hit the bottom of my eye'. It was pointed out to D that during his child protection medical he had told Dr G (community paediatrician) that his father had pushed him with the palm of his hand on his left eye. D insisted that he had been hit, not pushed. He said this had left a small swelling under his eye.
111. There is no evidence of swelling to D's left eye. He returned to the care of his mother on 22nd January. She does not say she saw any swelling. He met with social worker Ms H on 26th January. He was medically examined by Dr G that same day. Neither the social worker nor Dr G say they saw swelling under his eye. Medical photographs were taken on 26th February, one of which was a close-up photograph of D's face. The photographs do not provide evidence of swelling.
112. D gave a somewhat different account of this incident to social worker, Ms H. In her police witness statement, she recalls that D told her that,

> 'During that weekend [i.e. the weekend when the incident with the remote control occurred] further incidents occurred but D couldn't remember exactly when…He also describes that him and his dad were play fighting and his dad got the palm of his hand and hit him in the eye socket, but blamed D for it. D said his eye felt sore for a couple of days and there was a slight bruise which I could not see today….'

In cross-examination by Miss Venters QC on behalf of the father, D denied having told Ms H they had been playfighting. He said, 'Playfighting? No. this wasn't playfighting. This was not playfighting.

113. D stood by his account that he had gone to the front door, that his father had grabbed him by the arm, pulled him back into the living room, twisted his arm and pushed his head to the ground. He was told that his father did not accept any part of that account; that his father had not grabbed and twisted his arm or forced his head to the ground. D insisted that this had happened.

114. It is the father's case that D repeatedly swore at him. D denies this. I noted earlier that, according to Mr Spooner's report, during his interview with Mr Spooner D had been verbally abusive about his father and had expressed his anger towards him. D admitted that he had told Mr Spooner he had felt like 'clocking dad one on the jaw' and that he was going to smash a glass on his father's head. He admitted he had called his father a parasite.

The father's evidence

115. In the pre-prepared statement made by the father for the police, he sets out his own narrative of the events of the weekend. He says that D came to him after school on Friday 19th January. Later that evening he, D and Ms A went out for a meal to celebrate Ms A's birthday. On the way to the restaurant D became tearful, saying that he was missing his mum and her family. This was not unusual. When they got home they asked D to read out his poem. He made excuses. He went to his room.

116. The next morning they had planned to visit paternal grandmother for lunch. D took a long time to get ready. He was very uncooperative. D shouted at him in the car park, swearing at him and insulting him. The lunch plans were cancelled. D gave vent to a number of concerns – that his father believed him to be autistic, that his father held a grudge against his mum, that his father had referred to his mother as a devil. He said he wanted to go and live with his mother full-time. The argument continued. D said he would break his father's glasses and that he would knock his teeth out. He called his father a 'piece of shit'. D lashed out at him. This whole episode lasted for quite a long-time. Mr Hadden and Mr Finch both suggest that it lasted for four hours. I am not persuaded that the evidence supports such a precise timing. The father accepts that it went on for quite a while.

117. The father stood by this account in his oral evidence.

118. D was supposed to be staying with his father for the week. Without warning to the father, when he left school on 22nd January he went to his mother's home. The father has had no contact with D since he left for school that morning.

Ms A's evidence

119. In her written statement Ms A gives an account that is broadly similar to that given by the father. In her oral evidence she described D's behaviour on Saturday 20th January as 'very challenging'. He was ranting at his father. They were supposed to be going to have lunch with D's paternal grandmother. That was cancelled. D's boorish behaviour continued. He was aggressive and violent. The father remained calm. He did not retaliate.

Miss E's evidence

120. I have also heard evidence from Miss E, the father's sister (D's paternal aunt). Miss E said she noticed that D's behaviour 'changed drastically' during the summer of 2016. He became uncooperative, disrespectful and very defiant. He did not want to comply with anything his father wanted him to do.
121. On Sunday 21st January D and his father went round to paternal grandmother's house for a meal. Miss E was present. This was an awkward occasion as a result of D's aloofness and lack of engagement.
122. During the afternoon, D 'was highly emotional and swore using the F word twice when expressing how misunderstood he was by us.
123. Miss E makes the point that at no time during her conversation with D did he allege that his father had assaulted him the previous day and neither did she witness any injuries. It wasn't until the next day, 22nd January, when the mother emailed the father, that she became aware of D's allegations.
124. Miss E has never seen the father hit D. Indeed, she has never seen him hit anyone.

Sixth allegation: *'The Respondent father physically assaulted D during a verbal argument, between him and D, by: Grabbed D around his shoulder/collar and pushing D backwards so that he fell onto a coffee table which caused bruising on the back of the right shoulder. This caused D physical pain.*

125. This incident is said to have taken place on 20th January 2018. The relevant witnesses in respect of this incident are D, Ms H (duty social worker on the day that D's disclosure

was reported to Children's Services), Dr G, (the community paediatrician who conducted a child protection medical examination), Dr Russell Austin, (a consultant paediatrician and independent medical expert witness), Ms A (the father's partner) and the father.

D's evidence

126. D underwent a video-recorded ABE interview on 15th February 2018. I have watched the DVD. I have read the transcript of this interview. I have also heard D give oral evidence. At court he was ably assisted by a very experienced intermediary, Mrs Janet Smith.

127. At the beginning of his ABE interview D gave a very detailed account of the problems he says he had been experiencing living with his father. He refers to a number of incidents. What is missing from this extensive narrative is any indication of the dates of the various incidents. However, it is clear that the alleged incident involving the coffee table occurred on Saturday 20th January 2018. D told the police,

> 'when I went back to my dad's flat I was just silent for a while and then after he kicked off with me again like he was just acting out like why did you do that, why did you do this and I told him I wanted to go to my mum's and I still want to go to my mum's and you can't stop me and at that moment dad must have thought that was his breaking point because he grabbed me around here just around the shoulder collar and he threw me backward and that is when I landed on my dad's girlfriend's coffee table and then at that moment my shoulder blade actually caught off the edge of the table, my head was just off the corner if I had my head tilted I would have hit my head on the corner so I scrapped the thingy the shoulder blade on the coffee table and it hurt. I checked I wasn't cut but it hurt and then when I got up I had two arms hurting. I just cried myself to sleep that night.'

128. Later in the interview the police officer asked D where his father had grabbed him. He said,

> 'I forgot which side but he grabbed me on the collar or the shoulder, I forgot which and it was almost as if he was pushing me pushed outward and the coffee [table] wasn't that far away, probably about a foot away and that was when he pushed and I fell backward on to it my head hit the back edge, my head wasn't really that hurt because my head managed to miss the corner but my shoulder blade caught of the edge of the table so when I pulled it it felt really sore as if it had literally just been bashed because I fell backwards on it. It wasn't cut or anything but it was like sore after scraping and after bashing it and then that was quite painful…it hurt it lasted for a day or two and then it ended…'

129. D told the police that his father's partner, Ms A, was present when this incident occurred. The incident had occurred in her flat. She was sitting on the sofa working.

She saw him fall. There was a potted plant on the table. She told him not to knock it over. D was asked what else she had said. He replied that, ‘she didn’t really say much it was almost as if she was watching a spectator event’. He was adamant that his father had pushed him over the table.

130. It is the father’s case that he was sitting on a swivel chair, that D tried to hit him, that he pushed his father on his shoulders and that he was generally aggressive. In response, and in order to protect himself, the father had held D’s arms. D denied this account. His father says that the next day D confessed that he had become enraged. D denied this.

131. In my experience, following an incident such as this I would normally have expected the police to go out and inspect the location where the incident is said to have occurred and to have taken photographs – in this case, in particular, photographs of the coffee table. There was no site inspection. There were no photographs. The only photographs before the court are those provided by the father in response to a request from the court. This is but one of a litany of failings by professionals with respect to the investigation of the coffee table incident.

Ms H’s evidence

132. Ms H is a social worker employed by the local authority. On 26th January 2018 she was on duty in the Reception Team. A report was received from D’s school that he had made a disclosure of physical abuse by his father. Ms H was allocated to the case by her manager. At around 11.45am she went to D’s school and spoke to D alone. D described the events of the previous weekend. In her police witness statement Ms H reports that D told her that the previous weekend,

> ‘he was at his dad’s girlfriend’s house arguing because he wanted to see his mum and his dad grabbed him by his shoulder and neck area and pushed him. D said he fell and landed on the coffee table, his back on the flat bit and the end of the table but his legs were hurt on the corner of the table.’

In his oral evidence D seemed surprised at the suggestion he had hurt his legs. He said that was not the case. He did not know where Ms H had got that information from. He had not said this to her.

133. Ms H asked D if she could look at his shoulder for any marks. He agreed. She pulled the collar of his shirt across his left shoulder. She could see faint red marks on top of his shoulder. He also ‘complained that his shoulder going up to his neck was sore’. In

the absence of a body map it was not possible to confirm with Ms H that the ‘faint red marks’ she saw are the marks observed by Dr G when carrying out a child protection medical examination. Dr G describes the marks as ‘oblique’ which I take to mean slanting. Ms H could not remember the direction of the ‘faint red marks’ she observed. She does not have ‘a clear recollection’ of what the marks looked like.

134. D did not say that he had hurt his head on the coffee table. Neither did he say that he had hurt his back. He said he had only hurt his legs. He said that his back and neck were sore and that his shoulder going up to his neck was also sore.

135. Ms H was asked about D’s demeanour. She described him as quiet. He wasn’t tearful. If he had been distressed she would have made a note.

136. Ms H was also asked about the extent of her knowledge of previous proceedings and of findings made by other judges. She was not aware that in an earlier judgment a judge had concluded that the mother had not proved her allegation that the father had raped her.

137. It was clear that she knew very little about the judgments given during the first tranche of litigation between 2008 and 2012.

138. Between 26th January and 16th February Ms H undertook a single assessment. The assessment contains a chronology which Ms H appears to have prepared on the basis of social work records going back to 2005. The chronology makes no reference to the litigation history and to the findings made by other judges.

139. Whereas Ms H spoke to the mother and D and obtained their accounts of what had happened, she did not speak to the father. It follows, therefore, that not only did she not see the current events in their historical context she also failed to speak to the family member most likely to have pointed her in the direction of that historical context.

Dr G’s evidence

140. Dr G is a community paediatrician. At the request of the local authority, on Friday 26th January 2018 she undertook a child protection medical. The examination was carried out at the local Children’s Hospital in the presence of social worker, Ms H, and the mother.

141. Dr G records that a history was taken from Ms H, D and the mother. Ms H told her that about four days ago when D was at home with his father, the father became angry when he said he wanted to go to his Mum’s. Father,

> 'grabbed D by his left arm and jerked it up behind D's back. Ms H mentions that she saw some red marks on the back of D's right shoulder.'

142. D gave a similar account to Dr G saying that over the last weekend Dad 'grabbed him by the left arm and bent it hard behind his right shoulder'. D went on to mention another incident over the last weekend 'when Dad pushed him with the back of his palm on D's left eye and that it was swollen and dark at this time'. D also told her about an incident in which,

> 'Dad pushed D and he fell on his back over a coffee table whilst they were at Dad's girlfriend's house. D said he has pain in the back of his neck and in both shoulders since then.'

143. Dr G also notes the history provided by the mother who told her that,

> 'D was with his dad about four days ago and he got some red marks on the back of his shoulders that she had seen on D's back. Also D had a swollen left eye because Dad had pushed him with his palm over his eye. Mum also mentions that there had been a few incidents last December when Dad physically assaulted D.'

144. Dr G examined D. She notes that he 'seemed anxious and not happy today during the medical. He seemed to have sore shoulders and he could not move his neck freely.' Dr G goes on to set out what she describes as 'significant findings'. These consist of,

> 'Three oblique lines on the back of the right shoulder, average length from 2cm to 3cm. D had mentioned that Dad had pushed him and he fell on his back over a coffee table. No other injuries were seen.'

This is followed by a section which Dr G calls 'Interpretation' in which she says that,

> 'The red bruises seen on the back of the right shoulder were explained by D as his dad had pushed him and he fell on his back over a coffee table and the conclusion of non-accidental injury is most likely.'

145. On the third day of this hearing D's legal team produced a copy of a body map. I am told that the body map was prepared by Dr G. I assume it was prepared on the day of her examination (26th January) though it is not dated. It is not a particularly helpful document. It shows three parallel lines. It indicates that the lines are 3cm in length. It does not indicate the width of each line or the distance between each line. It does not describe the colour of each line, though in Dr G's report she refers to 'red bruises'. That appears to be a reference to the three lines. The body map was not available when Dr Austin gave his evidence. It was sent to him subsequently. He said that it did not affect the oral evidence he had given to the court on 1st October. This is unsatisfactory.

146. At the time this hearing took place there was a single photograph of D's shoulder. In the course of his ABE interview, D gives the impression that more than one photograph was taken. It later became clear that D was correct. Those other photographs were not disclosed prior to trial. It was not until 11th October, almost a week after I had finished hearing evidence, that the relevant NHS Foundation Trust confirmed (a) that three photographs had been taken and (b) that the photographer was Dr G. Dr G does not refer to any of these photographs in her written report.

147. The second photograph is taken from head to waist. The third photograph is of D's left eye. Nowhere in her report does Dr G refer to any injuries in either of these two areas. These two photographs do not advance matters. They should, though, have been produced by the Trust several months ago.

148. Dr G saw D on 26th January, six days after the alleged incident in which he says he was pushed over the coffee table. On the basis of what she saw in real time, Dr G offers no opinion on the timing of the injuries and in particular whether what she saw is consistent with an event said to have occurred six days earlier.

149. The photograph that has been produced is of very poor quality. It is not possible to identify any bruising on this photograph, whether red bruising or otherwise and whether with respect to D's right shoulder or elsewhere. In particular, the photograph provides no evidence of the three marks highlighted on the belatedly produced body map. Its evidential value is nil. When taken with the late-produced body map which is also of doubtful quality, I come to the conclusion that Dr G's report is of little value. Dr G has not given oral evidence at this hearing. She has not, therefore, had the opportunity to respond to my criticisms.

150. The Royal College of Paediatrics and Child Health has published the *Child Protection Companion*, setting out on-line guidance for paediatricians. This is an invaluable on-line tool for all paediatricians, continuously updated. It should be regarded as compulsory reading for all paediatricians who are routinely involved in safeguarding.

151. Section 17 of the *Child Protection Companion* is headed 'Photo documentation'. In this case, Dr G has not followed that guidance. Under the heading 'Good practice recommendations' the guidance states that:

> '1. Paediatricians should work to a locally agreed protocol to ensure adequate standards of photography, including storage of images…
> 2. Record whether the photo documentation represents what you saw at examination.'

It is unclear whether there is a locally agreed protocol in Derbyshire Hospitals NHS Foundation Trust. If there is, it has not been produced. As it has not been produced it is not possible to know whether it has been complied with on this occasion. What is clear is that the disclosure received from the hospital does not indicate that Dr G made a record of whether the photo documentation in this case represents what she saw at examination. Dr G completed what appears to be a local pro forma headed 'Examination under child protection procedures – physical abuse'. This form makes no reference to a photograph.

152. The following parts of the guidance on photo-documentation do not appear to have been adequately complied with in this case:

> **17.1 Introduction**
> 17.1.1 Photographic imaging of external injuries in suspected child abuse serves several purposes:
>
> a. A good quality image forms part of the medical case notes to serve as a record of the injury seen and its characteristics. The image is an adjunct to examination and should be interpreted alongside documented clinical findings and diagrams.
> b. The image may be used to inform case discussion at peer review or when seeking a second or expert opinion without subjecting the child to repeat examinations.
> c. The image may be used in child protection and court proceedings for evidential purposes.
> d. Images taken to a high forensic standard can be used in the forensic analysis of the case. The shape, size, and position of a patterned injury can be of forensic significance when comparing the pattern, characteristics or measurements of the injury to the implement alleged or suspected to have been used, e.g. bite or slap marks…
>
> 17.1.2 Interpretation will depend upon the quality of the images recorded, for example how well patterns of injury are reproduced in the photograph. Factors such as sharpness, exposure, tone, contrast, colour, angular distortion, skin reflection from the flash, lens flare and artifacts can all affect the standard of image quality.
>
> 17.1.3 It is good practice to photograph any visible finding in suspected child abuse or neglect. Digital imaging is now the standard technique used and can be undertaken by the:
>
> a. medical photographer
> b. examining doctor with appropriate training and equipment
> c. police photographer.
>
> 17.1.4 A medical photographer with specific training in clinical photography is the preferred option…

17.2 Photo-documentation…
17.2.2 All injuries and features should be described and recorded in case notes and body maps.

17.5 Images in medico-legal practice
17.5.1 The doctor must state in the statement or court report if the injuries and clinical findings have been photo-documented and it is the doctor's responsibility to confirm the identity of photographs.

17.5.2 The clinical findings must also be described and interpreted in writing; stating what evidence is contained within the photo-documentation. Line drawings are helpful.

17.5.3 The quality of the images must be referred to and whether they truly represent the clinical findings.

153. In this case, as a result of Dr G's failure to follow that guidance, the medical photographs do not assist the forensic process.

Dr Russell Austin

154. Dr Russell Austin is a consultant paediatrician. He has been in his present post since 1993 apart from a six-year period from 1999 to 2005 when he worked as a consultant neurodevelopmental paediatrician in New Zealand. He has a significant medico-legal practice.

155. Dr Austin has prepared one written report dated 27th July 2018 to which he has added further detail in a number of emails. His report is based on relevant papers sent to him by the guardian's solicitor. He has seen one medical photograph which is said to relate to the injury sustained on 20th January 2018. At court he was also shown a photograph which is said to be of the table over which D fell when (allegedly) pushed by the father. Dr Austin has not seen or spoken to D or either of his parents.

156. Dr Austin's opinion is expressed relatively shortly. It is appropriate to set it out in full. He says,

'3.1 In terms of chronology, the events of 18th – 20th January are unable to be determined from the medical evaluation of Dr G on 26/01/18 i.e. any injuries seen on 26/01.18 are unable to be timed and dated scientifically.
3.2 The history given by D to Dr G on 26/01/18 described 3 injury events and they are clearly described in Dr G's report.
3.3 Dr G on examination documents sore shoulder and does not move neck freely. She is non-specific in her documentation and does not relate injury to an event(s).
3.4 Dr G describes three lines of bruises a bout 2-3cm in length at the upper right back over the shoulder. She concludes consistent with fall onto coffee table and therefore a non-accidental injury [NAI].
3.5 I agree there were 3 lines of bruises and the cause of such bruising is blunt force trauma via a linear object.

3.6 <3.5 can be caused directly by being hit with a thin linear object 3 times or a patterned linear object once. This has not been described by D.
3.7 <3.5 can be caused indirectly by a fall onto a linear object which could cause the injuries seen in one event.
3.8 The level of force for <3.7 would be generated by the height of D in an arc (of the fall) against the height of the coffee table and would be calculated by simply physics i.e. mass x distance.
3.9 <3.5 if caused by a fall from a push would then technically be neglect (by the person who has pushed D) and the injury would then be an accidental injury [AI] but if the "pusher" was an adult who had intended to forcibly push D then the resulting injury would be neglectful and an NAI. I understand why Dr G has concluded that the injury was an NAI and I agree with her i.e. the push from the adult should not have occurred and the resultant injury would not have happened.
3.10 The injury itself does not give us an indication of whether it is a direct injury or an indirect injury but D's story is plausible and consistent with the injury seen.
3.11 I cannot date the injuries.
3.12 Usually parents take photographs of injuries. I have not seen photographs from the 21st-25th January 2018 in the bundles.
3.13 I cannot comment re: the injuries to D's arm or face.'

157. In his oral evidence, Dr Austin observed that there is nothing in the photograph that has been produced that ties in with the description given by Dr G in her report. To that must be added the fact that although Dr G refers to 'three oblique lines' with 'an average length from 2cm to 3cm' she does not describe the colour or width of the lines, she does not indicate in which direction the lines were sloping, she does not indicate the gap between each of the three lines. Dr G also fails to offer any opinion as to timing.

158. Given those points, I found it surprising that Dr Austin was able to say that he agreed 'that there were 3 lines of bruises and the cause of such bruising is blunt force trauma via a linear object' and that he also agreed with Dr G's professional opinion that the 'the conclusion of non-accidental injury is most likely'. In my judgment there is insufficient evidence concerning the alleged injuries to enable Dr G or Dr Austin to come to that conclusion.

159. In both his report and in his oral evidence, Dr Austin strayed into the field of biomechanical engineering. For example, he opines – it may be more accurate to say that he speculates – that the lines could 'be caused indirectly by a fall onto a linear object which could cause the injuries seen in one event. The level of force would be generated by the height of D in an arc (of the fall) against the height of the coffee table and would be calculated by simple physics i.e. mass x distance'. He made the same point in his oral evidence. He accepts that he has no training or experience in the field of biomechanical engineering.

160. Dr Austin notes that D has been consistent in saying that he fell onto a coffee table. He continued to support the conclusions reached by Dr G. He denied that he was being dogmatic.

The father

161. The father denies that he pushed D causing him to fall backwards over a coffee table. In his pre-prepared statement he handed to the police the father says that at the time of this incident he was sitting in a swivel chair. D was aggressive towards him. He says,

> 'D was lashing out at me as I remained seated on a swivel chair. He was repeatedly kicking my legs and trying to hit my face and upper body with his hand. Initially I was protecting my face but when I began to overbalance on the chair as a result of his actions I held his forearms and held him at bay. At no time did I hit him or push him away. My motive was to hold him at bay to stop him from attacking me and when I let go he would immediately continue to do so again. I held him as gently as possible although he was constantly struggling.'

162. To try to defuse the incident, the father made an excuse saying that he had to go to the airport to collect his sister. D agreed to go with him. As they set off to walk to the father's car D ran off. The father thought he had probably gone to his mother's house. Minutes later he and Ms A heard a tap on the patio door. D was standing outside. He says that D,

> 'came back in and told us that his mum was not at home and that he was scared that he (the father) would get her into trouble with the police and that that was the reason why he had gone back to his father's flat.'

Ms A's evidence

163. Ms A confirmed that on the Saturday afternoon they had been at her apartment and the father was sitting in her swivel chair. The chair has a massager attachment. In the past, D has enjoyed using this chair. On this occasion he said that he felt 'a little pain in between his shoulder blades'. Ms A asked him what had happened. He said something had happened at school but did not give details.

164. D then decided to stand between his father and the television set. He stood over his father calling him abusive names and using inappropriate names. D then hit out at his father's face and upper body and kicked him repeatedly on the legs. Eventually the father had to hold on to D's forearms to keep him at bay. In Ms A's opinion, D's behaviour was aggressive, intimidating, provocative and very challenging. She says that the father's,

> ‘only physical contact with D was in an effort to try to stop D from hitting him and leaning on him, and in doing so he simply used to hold D at bay. At no time did D indicate that his father was hurting him and at no time did D fall backwards onto anything. I was present in the room with his father and D throughout, and as I live in a relatively small apartment, I had a clear view of whatever was happening.’

Parental alienation

165. Most experienced Family Court judges would acknowledge that there is a category of private law Children Act disputes which present profoundly difficult challenges to the court and which frequently cause judges near despair as they endeavour to achieve a positive and enduring outcome for the child. Descriptive language is used to highlight the complexity of these cases – for example, implacable hostility, intractable dispute, high conflict dispute. In some of these cases the judge’s sense of despair at having failed to achieve a positive outcome for the child is palpable. In *Re D (Intractable Contact Dispute: Publicity)* [2004] EWHC 727 (Fam) Munby J memorably began his judgment by saying: ‘On 11 November 2003 a wholly deserving father left my court in tears having been driven to abandon his battle for contact with his seven year old daughter D.’

166. It is acknowledged that in these difficult and challenging cases it is often appropriate to make the child a party to the proceedings and to appoint a children’s guardian for her under rule 16.4 of the Family Procedure Rules 2010. Practice Direction 16A sets out guidance on circumstances which may justify making the child a party. Included in that list is §7.2(c):

> ‘where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational or implacable hostility to contact or where the child may be suffering harm associated with the contact dispute’.

It is within this category of case that reference is sometimes made to ‘alienation’, parental alienation’ and ‘parental alienation syndrome’. Use of such expressions frequently gives rise to criticism, profound scepticism and doubt.

167. Parental alienation syndrome is a theory first propounded by American child psychiatrist Richard Gardner in 1985. For the mother, Mr Hadden MBE has produced an article published by Carol S Bruch in 2001, *Parental alienation syndrome and parental alienation: getting it wrong in child custody cases*, in which the author systematically demolishes Gardner’s approach, which she refers to as ‘junk science’. For my part I have no difficulty in accepting Bruch’s criticisms of Gardner’s work in

that area. That does not, though, diminish the very real concerns about the problem of alienation in general and parental alienation in particular.

168. For the guardian, Mr Finch makes reference to a judgment I handed down in 2010, *Re S (Transfer of Residence)* [2010] EWHC B19 (Fam), a case in which it was argued on behalf of the father that the mother had alienated his 12-year-old son from him. On the issue of alienation I said this:

> *'The concept of alienation*
>
> 43. In his first report Dr Weir gave this description of the concept of alienation:
>
> > 'There are children who show an extraordinary degree of animosity towards a parent with whom they once had a loving relationship. Most of these children will show some or all of [a cluster of psychological responses]. Within an individual child (and between children in the same family) the presence of the features can vary rapidly over time and place, but in their full manifestation are so surprising and unique as to be unforgettable. The proposed term 'Alienation' applies only to the cluster of psychological responses in the child with no need to presume a deliberate campaign of denigration by one parent. There is now research data supporting a multifactorial aetiology for 'Alienation' following parental separation, involving contributions from both parents and vulnerabilities within the child.' …
>
> 44. In the light of the considerable body of evidence I have heard and read in this case over the last three years, the research literature that has been produced and my experience of dealing with other high conflict cases involving different experts, I am satisfied that Dr Weir's evidence as to the concept of alienation as a feature of some high conflict parental disputes may today be regarded as being mainstream.'

169. In April 2018, a team from the Cardiff University School of Law and Politics, headed by Julie Doughty, published a *Review of research and case law on parental alienation*. The work was commissioned by Cafcass Cymru 'to guide practice'. In a section of her report headed *A rapid review of empirical evidence on parental* a*lienation* Doughty comes to the following conclusions;

> 'There is a paucity of empirical research into parental alienation, and what exists is dominated by a few key authors. Hence, there is no definitive definition of parental alienation within the research literature. Generally, it has been accepted that parental alienation refers to the unwarranted rejection of the alienated parent by the child, whose alliance with the alienating parent is characterised by extreme negativity towards the alienated parent due to the deliberate or unintentional actions of the alienating parent so as to adversely affect the relationship with the alienated parent. Yet, determining unwarranted rejection is problematic due to its multiple determinants, including the behaviours and characteristics of the alienating parent, alienated parent and the child. This is compounded by the child's

age and developmental stage as well as their personality traits, and the extent to which the child internalises negative consequences of triangulation. This renders establishing the prevalence and long-term effects of parental alienation difficult…'

170. More recently Cafcass has published on its website a new assessment framework for private law cases. The assessment contains a section headed 'Resources for assessing child refusal/assistance' which in turn has a link to a section headed, 'Typical behaviours exhibited where alienation may be a factor'. These include:

- The child's opinion of a parent is unjustifiably one sided, all good or all bad, idealises on parent and devalues the other.
- Vilification of rejected parent can amount to a campaign against them.
- Trivial, false, weak and/or irrational reasons to justify dislike or hatred.
- Reactions and perceptions are unjustified or disproportionate to parent's behaviours.
- Talks openly and without prompting about the rejected parent's perceived shortcomings.
- Revises history to eliminate or diminish the positive memories of the previously beneficial experiences with the rejected parent. May report events that they could not possibly remember.
- Extends dislike/hatred to extended family or rejected parent (rejection by association).
- No guilt or ambivalence regarding their attitudes towards the rejected parent.
- Speech about rejected parent appears scripted, it has an artificial quality, no conviction, uses adult language, has a rehearsed quality.
- Claims to be fearful but is aggressive, confrontational, even belligerent.

That list of 'typical behaviours' clearly resonates with the facts of this case.

171. In this paper, Doughty helpfully reviews some of the relevant authorities. She says that,

'The judgments tend to be fact-specific but the following points can be drawn:

- Courts will not allow the implacable hostility of one parent to deter them from making a contact order where the child's welfare otherwise requires it. In such a case contact should only be refused where the court is satisfied that there is a serious risk of harm if contact were to be ordered.
- In some very exceptional cases, where the non-resident parent's behaviour cannot be criticised, the effect on the child of ongoing contact proceedings is such that the court will decide those proceedings should not continue.
- Where allegations of parental alienation are made, the court will need to record a determination of the facts, or risk an unnecessary appeal.
- There is no blanket solution, but outcomes ae more likely to meet the child's needs where there is:
  - (a) Early resolution of disputed facts about domestic violence.
  - (b) Early intervention where alienation appears to be an issue

172. In reliance upon the decision of the Court of Appeal in *Re J* [2018] EWCA Civ 115, Doughty goes on to make the point that judicial determination of allegations is required

before a s.7 report can advise the court on the child's welfare. This point has recently been highlighted by Lord Justice McFarlane (as he then was) in two keynote addresses, the first to the NAGALRO Annual Conference 2018, entitled *Contact: A point of view* and the second to the Families Need Fathers Annual Conference 2018 on 25th June. In the latter, emphasising the importance of a court-led investigation of the facts, he said,

> 'I wish to say something now about "alienation". For some time there has been debate as to whether or not the holy grail of "parental alienation syndrome" actually exists. For my part, I have never regarded it as important to determine definitively whether or not psychologists or psychiatrists would be justified in attributing the label "syndrome" to any particular behaviour in this regard. In time gone by, there was similar debate as to whether a diagnosis could be made of "Munchhausen's Syndrome by Proxy" in such cases the focus of the Family Court, rightly, moved away from any psychological/psychiatric debate in order to concentrate on the particular behaviour of the particular parent in relation to the particular child in each individual case. If that behaviour was found to be abusive then action was taken, irrespective of whether or not a diagnosis of a particular personality or mental health condition in the parent could be made.
>
> In my view, "alienation" should be approached in the same way. From my experience as a first instance judge, albeit now more than 7 years ago, I readily accept that in some cases a parent can, either deliberately or inadvertently, turn the mind of their child against the other parent so that the child holds a wholly negative view of that other parent where such a negative view cannot be justified by reason of any past behaviour or any aspect of the parent-child relationship. Further, where that state of affairs has come to pass, it is likely to be emotionally harmful for the child to grow up in circumstances which maintain an unjustified and wholly negative view of the absent parent.
>
> The Women's Aid research describes accusations of parental alienation being used against women who raise concerns about domestic abuse to the extent that allegations of abuse are "obscured by allegations of parental alienation against the non-abusive parent."
>
> Drawing matters together, that short quotation from the Women's Aid research neatly points to a theme in this short address which is to stress the importance of fact finding. It is, as I have already observed crucial, both to the interests of the alleged victim and, in fact, to those of the alleged perpetrator, for any significant allegations of domestic abuse to be investigated and determined as matters of fact, similarly any significant allegation of "alienation," should also be laid out before the court and, if possible, determined on the same basis.'

173. Doughty also sets out a table of cases heard in the Court of Appeal and the High Court where alienation was identified, together with a brief analysis of each. One case not referred to in that table is *Re G (A Child: Intractable Contact)* [2013] EWHC B16 (Fam). In *Re G*, I attempted to set out the law relating to a number of issues that arise in intractable cases involving alienation. I said,

74. In assessing where a child's best welfare interests lie the court must take into account each of the factors set out in the welfare checklist in s.1(3). It is not by chance that the first factor set out in that list is the child's wishes and feelings. In his final position statement for this hearing, prepared at a time when he was still a litigant in person, the father refers to my decision in *Re S (Transfer of Residence)* [2010] EWHC 192 (Fam) [2010] 1 FLR 1785 [2010] 1 FLR 1785, a high conflict case concerning an 11 year old boy, and in particular to the approach I took to assessing S's wishes and feelings (see paragraphs 69 and 70).
75. Since counsel filed their written closing submissions in this case the Court of Appeal has handed down judgment in *Re A (A child)* [2013] EWCA Civ 1104. There are similarities between the facts of that case and those of *Re S (Transfer of Residence)*, not least that both cases are examples of high conflict parental disputes in which litigation has gone on for several years; in both cases the resident parent (the mother) was implacably hostile to contact taking place; in both cases achieving compliance with court orders proved a considerable challenge; and in both cases the children concerned had become alienated from their non-resident parent creating a problem for the court in undertaking a reliable assessment of the child's wishes and feelings. Four points made in *Re A* are relevant to the case before me.
76. Giving the leading judgment, McFarlane LJ sets out, firstly, some general points concerning the task of the judge in determining where the child's best welfare interests lie:

> '44. The determination of the order which best meets the court's duty to afford paramount consideration to the child's welfare is an exercise of judgment…In *Re B (A child)* [2013] UKSC 33] all five SCJ's agreed that the task of a trial judge making the ultimate determination of whether to make a care order was "more than to exercise a discretion" (Lord Wilson SCJ, paragraph 45). For the reasons I have given, I would include a 'no contact' order in private law cases in the same bracket. In such cases, the Supreme Court held that the trial judge's task is to comply with an obligation under HRA 1998, s 6(1) not to determine the application in a way which is incompatible with the Art 8 rights that are engaged.'

77. Secondly, addressing the problem of evaluating and determining the weight to be attached to the wishes and feelings of an alienated child, McFarlane LJ said,

> '68. If the judge's appraisal of the weight that can, and should, be attributed to M's wishes and feelings is soundly based, then it must follow that his conclusion on the merits of the welfare decision could not be categorised as 'wrong'. Such a decision would fall to be seen alongside, by way of example, those in the cases of *Re J (A Minor) (Contact)* [1994] 1 FLR 729 and *Kopf and Liberda v Austria (Application No 1598/06)* [2012] 1 FLR 1199 cited above. The evaluation of the weight to be given to the expressed wishes and feelings of a teenage child in situations where the parent with care is intractably hostile to contact is obviously not a straightforward matter, no matter how consistently or firmly those wishes are expressed. In this context the decision of HHJ Bellamy in *Re S (Transfer of Residence)* [2010] EWHC 192 (Fam); [2010] 1 FLR 1785 provides a good illustration.'

78. Thirdly, addressing the issue of the relevance of findings made in the past when making decisions about the future, McFarlane LJ said,

> '74. The judge's focus [in this case] is very much upon the here and now. It is plainly right for judges to make their evaluation of a child's welfare based upon the current situation, but in analysing that situation they must bring to bear such evidence that may be relevant from what has transpired in the past.'

79. Fourthly, as to the responsibility of the court not only to make but also to uphold orders regulating the exercise of parental responsibility towards children after separation, McFarlane LJ said,

> '53. The conduct of human relationships, particularly following the breakdown in the relationship between the parents of a child, are not readily conducive to organisation and dictat by court order; nor are they the responsibility of the courts or the judges. But, courts and judges do have a responsibility to utilise such substantive and procedural resources as are available to them to determine issues relating to children in a manner which affords paramount consideration to the welfare of those children and to do so in a manner, within the limits of the court's powers, which is likely to be effective as opposed to ineffective…
>
> 60. The need for the single judge who has charge of the case to establish a 'set strategy for the case' and to stick consistently to that strategy, so that all parties and the judge know what is happening and what the court plainly expects will happen, cannot be understated. If, as part of that strategy, the court makes an express order requiring the parent with care to comply with contact arrangements, and that order is breached then, as part of a consistent strategy, the judge must, in the absence of good reason for any failure, support the order that he or she has made by considering enforcement, either under the enforcement provisions in CA 1989, ss 11J-11N or by contempt proceedings. To do otherwise would be to abandon the strategy for the case with the risk that a situation similar to that which has occurred in the present case may develop; to do otherwise is also inconsistent with the rule of law.'

80. The issue of enforcement is problematic in high conflict cases particularly in those involving children who are old enough not only to express their wishes and feelings but to vote with their feet in order to try to ensure that their wishes and feelings prevail. The difficulties are well illustrated by the authorities – see, for example, the three judgments of Wall J (as he then was) in *Re M (Intractable Contact Dispute: Interim Care Orders)* [2003] EWHC 1024 (Fam); [2003] 2 FLR 636, *Re O (Contact: Withdrawal of Application)* [2003] EWHC 3031 (Fam); [2004] 1 FLR 1258 and *A v A (Shared Residence)* [2004] EWHC 142 (Fam); [2004] 1 FLR 1195, the decision of Munby J (as he then was) in *Re D (Intractable Contact Dispute: Publicity)* [2004] EWHC 727 (Fam); [2004] 1 FLR 1226) and my decision in *Re S (Transfer of Residence)*, to which I referred earlier, together with its sequels *Re S (A Child)* [2010] EWCA Civ 219, *Re S (A Child)* [2010] EWHC B2 (Fam), *Re S (A Child)* [2010] EWCA Civ 325 and *Re S (Transfer of Residence)* [2011] 1 FLR 1789.

81. The problem of enforcing orders made in high conflict cases arose acutely in *Re L-W (Enforcement and Committal: Contact)* [2010] EWCA Civ 1253; [2011] 1 FLR 1095. Munby LJ (as he then was) acknowledged the challenge

facing the court. He noted that 'there are various…techniques to which recourse may be had' (para 107) and went on to acknowledge that 'which form of order (if any) is appropriate in a particular case must of course depend upon the inevitably unique circumstances of the individual case.' (para 108). What is particularly notable, however, is his *cri de couer* shared, I have no doubt, by most family judges, that

> '101. It is one thing to postulate…that no court should threaten coercive action unless it is prepared to see it through. It is another to find that the process has reached an unanticipated crisis in which coercive action may actually undermine the objective. Both are unavoidable aspects of the deployment of judicial procedures to try to resolve differences and arguments which are centrally to do with human relations and only marginally to do with law.'

174. More recently, in *Re J (Children)* [2017] EWCA Civ 115, McFarlane LJ again underlined the importance of dealing with issues of fact quickly and the exceptionality of coming to the conclusion that a parent should not have contact with his child. He said,

> '55. In *Re M* this court (Sir James Munby P, Arden and Singh LJJ) considered the approach to an application by a transgender father, who had been a member of the ultra-orthodox Jewish community in which the children and their mother still lived. In the course of the court's judgment consideration was given to the approach that a family court must adopt to the issue of continued contact in difficult circumstances. The judgment of the court (delivered by the President) stated (at paragraphs 56 and 57):
>
> > '56. So much for the general principles by reference to which we have to determine the three grounds of appeal. In relation to ground (iii), there was common ground between the parties as to the governing principles. After a detailed analysis of both the Strasbourg and domestic jurisprudence, this court in *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521, [2011] 2 FLR 912, para 47, summarised matters as follows:
> >
> > - Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
> > - Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
> > - There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.'"

57. To that summary, which has been followed both in *Re W (Direct Contact)* [2012] EWCA Civ 999, [2013] 1 FLR 494, and *Re Q (Implacable Contact Dispute)* [2015] EWCA Civ 991, [2016] 2 FR 287, we only add a reference to what Balcombe LJ said in *Re J (A Minor) (Contact)* [1994] 1 FLR 729, 736:

> "… judges should be very reluctant to allow the implacable hostility of one parent (usually the parent who has a residence order in his or her favour), to deter them from making a contact order where they believe the child's welfare requires it. The danger of allowing the implacable hostility of the residential parent (usually the mother) to frustrate the court's decision is too obvious to require repetition on my part."'

56. Shortly thereafter, the court re-emphasised the importance of the duty to strive to achieve contact:

> '61. The second [central principle], which goes to the heart of the issue in relation to ground (iii), is the principle that the judge has a *positive* duty to attempt to promote contact; that the judge must grapple with all the available alternatives before abandoning hope of achieving some contact; that the judge must be careful not to come to a premature decision; and that "contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt" (see paragraph 56 above).'

At paragraph 64 he went on to say,

> 'That is not the approach of courts where religion is not in play. Where an intransigent parent is fostering in their child a damaging view of the other parent, and thereby alienating the child from the other parent and denying contact between them, the court does not hesitate to invoke robust methods where that is required in the child's interests. Thus, the court may make an order transferring the living arrangements (residence) from one parent to the other, either to take immediate effect or (see *Re D (Children)* [2009] EWCA Civ 1551 and *Re D (Children)* [2010] EWCA Civ 496) suspended so long as the defaulting parent complies with the court's order for contact. The court can make the child a ward of court. The court can make an order under section 37 of the Children Act 1989 for a report from the local authority with a view to the commencement of proceedings for taking the child into public care.'

Psychological evidence

175. With respect to the father's schedule of findings, having set out the background I now turn to consider the evidence. The parties were given permission jointly to instruct Mr Darren Spooner, a clinical psychologist, to undertake an assessment of D and of both parents. His report is dated 28th June. Mr Spooner has also prepared a number of short addendum reports in which he has responded to specific questions. He has also given oral evidence.

Assessment of D

176. Mr Spooner's principal report is dated 28th June 2017. At that time there was in place a shared care arrangement. That changed in January 2018. Since then D has lived exclusively with his mother. The father has not had contact with D since 22nd January 2018.

177. Mr Spooner makes the point that cases such as this 'are very complex and require proper investigation'. They are 'notoriously difficult' for professionals and courts to deal with.

178. Mr Spooner begins his report by setting out a detailed (15 page) literature review concerning parental alienation, contact and residence in private law Children Act cases. He makes the point that he has not charged for this work but that it is taken from presentations he has given to Family Justice Boards. Sections in that review address issues such as the concept of alienation, the causes of alienation and the consequences of alienation. It is only necessary for me to refer to one small section of that exposition.

179. Referring to the work of Richard Gardner, Mr Spooner notes 'Gardner's eight symptoms of alienation –

    a. A campaign of denigration. The child is obsessed with the "hatred" of the target parent. The child speaks of the hated parent with every vilification and profanity in their vocabulary. The vilification has the rehearsed quality of a litany. The denigration includes not just the negativity of the other parent, but also the child's own contributions. The denigration may or may not include false sex-abuse allegations.
    b. Weak, absurd or frivolous rationalisations for the denigration of the rejected parent.
    c. Lack of ambivalence and polarisation of attitudes – they see the residential parent as good in all respects, and non-residential as bad in all respects.
    d. The independent thinker phenomenon – the Child claims that their views are their own and not influenced by anyone else.
    e. The Child demonstrates an automatic and full support of anything the residential parent wants.
    f. The Child displays an apparent absence of guilt for their behaviour and attitudes towards non-resident parent.

g. The presence of borrowed scenarios (a rehearsed quality to feelings and attitudes sometimes using the same phrases and language as the residential parent).
h. The spread of animosity to the rejected parents' family and friends.'

180. Mr Spooner's report of his mental state examination of D is both illuminating and disturbing – see §85 above. Mr Spooner draws some significant conclusions from this. He says,

> '7. D's presentation and narrative were exactly what we would see in a child who has been alienated from a parent. See pages 6 to 8 above in this respect.
> 8. It simply makes no sense at all that D makes such a raft of allegations of chronic and severe abuse by his father (and the paternal family), yet (a) his mother told me that he has been happy and had a good time seeing his father recently since contact started up again and (b) D has been seen to have had a close, loving relationship with his father and been looked after well over time.
> 9. On the other hand, he promotes an exclusively positive and glowing impression of his mother, her partner and her family. In his eyes they are all perfect and flawless and can do no wrong. On the other hand he presents a wholly demonised view of his father and his wider family.
> 10. D's narrative and vocabulary were more mature and adult than his years, and it is clear that his mother has shared with him information that she perhaps should have kept to herself, such as having a termination of pregnancy last year. He readily uses adult phrases and turns of speech, but it also has to be remembered that he has above average verbal intelligence.'

181. Mr Spooner then moved on to set out detail relating to his psychological assessment of D. D was very open. Indeed, he appeared very keen to talk, though this was largely limited to denigrating his father and praising his mother – see §87 above. On a number of occasions Mr Spooner attempted to change the direction of the conversation but always D would bring it back to denigrating his father. D was clear that his father had always been abusive towards him. He had nothing positive to say about his father at any time. This reflects the case papers which Mr Spooner has read, in which D does not make any positive comments about his father. In his oral evidence, Mr Spooner described D at the time of interview as being,

> 'very strident, he was as rejecting of a parent as any child I've met, and it may well be the case that he has become more strident over time, but again he was clear with me that his father had always been an abusive, neglectful parent'.

182. Mr Spooner went on to say that,

> 'This is a child who has always had a close loving relationship and seemingly secure attachment to his father and he now wholly denigrates him and says he wants nothing to do with him; and children don't reject parents, it's very unusual…'

183. In another very detailed section of his report, headed ‘opinion’, Mr Spooner says that it is his opinion that,

> ‘76. D displays clear and unmistakable features of parental alienation in my opinion, and this means that he is probably not expressing his own true wishes and feelings. It just doesn’t make sense that he is vociferously rejecting and denigrating his father, with whom he is known to a have always had a good relationship.’

184. Because of his concern that D has become alienated against his father, Mr Spooner says that in his opinion, ‘D’s wishes and feelings are unreliable’. He goes on to suggest that D is probably expressing his mother’s and/or her partner’s wishes and feelings. This immediately creates a problem for the court. The mother lives with her partner, T. Save that I was informed by social worker Miss S that the local authority has undertaken the usual safeguarding checks in respect of T, the results of which raised no concerns, nothing appears to be known about this man. The mother told Mr Spooner that they had been together for three years. However, no information has been provided concerning his age, his employment, his marital status or his experience (if any) of caring for children. He has not filed a written statement. He has not given oral evidence at this hearing. So far as I am aware he has not even attended court with the mother to offer her moral support. If D is indeed an alienated child and if T bears some responsibility for that state of affairs, the lack of information relating to him severely inhibits the scope of any findings the court can make.

185. The authorities, the out of court judicial comment and the research to which I referred earlier all emphasise the importance of the court undertaking an investigation by way of a finding of fact hearing and making findings at an early stage. It is highly regrettable that that has not happened in this case. At the end of his assessment of D, Mr Spooner makes the point that,

> ‘133. Really the resolution for the difficulties in this family rests with both of D’s parents somehow re-establishing a means of relating to one another again so that they can (a) establish a shared parenting script and therefore (b) align their parenting efforts to jointly meet D’s needs.
> 134. For as long as these parents are pitched against each other D will be in the middle and he will continue to shoulder what I think is an unbearable load of anguish resulting from a conflict of loyalty.
> 135. I think D is fully aware of his parents’ attitudes and feelings towards one another and I think he is acutely aware that he is currently the prize in a winner-takes-all residence dispute.
> 136. How could he feel anything but conflicted and split down the middle by this?
> 137. Sadly, D appears to have attempted to resolve his conflict of loyalty by rejecting his father and aligning himself with his mother, and the history to this case suggests that this may well have been her hope all along. For this reason I think the Court needs to make further findings in respect of alienation.’

186. So far as concerns the reliability of D's complaints about his father and his claim to be fearful of him, it is appropriate to note a passage in Mr Spooner's addendum report dated 26th October. Mr Spooner reports an occasion when he observed handover take place at the mother's house and D's presentation when he arrived at his father's house;

> '21. I was in the family home when D's father arrived to pick him up. D was a bit melodramatically stroppy at having to go with his father and stared daggers at him briefly at the end of the garden path, but they then walked off up the street chatting away.
> 22. The parents spoke with each other on the garden path about his football boots and the arrangements for the next two days. They were civil and polite to one another and D would not have observed anything worrying about the interactions between his parents.
> 23. On arrival at his father's home D was relaxed and clearly felt at home. His behaviour around his father was largely the same as it was around his mother, but he was a little less vocal and a little more emotionally distant for the first few minutes. He soon warmed up and chatted freely to his father. He mentioned his mother and a particularly enjoyable holiday they shared together recently in the Lake District, and it was clear to me that he did not fear a negative response from his father at the mention of his mother.
> 24. D showed no fear or trepidation in the presence of his father and neither did I suspect he was repressing his own feelings in order to please his father. He displayed no behaviours around his father that are consistent with his previous damning allegations about him…
> 25. D also demonstrated that he could interrupt both parents, suggesting he does not fear punitive response.'

187. In his closing submissions on behalf of the guardian, Mr Finch makes the point that Mr Spooner has failed to consider any alternative explanations for D's behaviour other than alienation. He submits that,

> 'There appears to be a lack of considering other alternatives that may explain D's presentation. When those matters were suggested to him in cross examination Mr Spooner suggested that he had considered them in his head but did not need to write them down as alienation was the only theory that fitted.'

188. Mr Hadden, for the mother, took up the same point in his cross-examination of Mr Spooner: suggesting that his approach was blinkered, rigid and dogmatic. That Mr Spooner's firm view is that this is a case of parental alienation. He has not considered alternatives. His mind is made up. For him this issue of parental alienation is, as Mr Hadden rather inelegantly put it, a hobbyhorse.

189. I took that point up with Mr Spooner:

Judge: Mr Hadden having mentioned the point, would you describe it as a hobbyhorse?
Mr Spooner: A hobbyhorse; I'd describe it as an area of expertise.
Judge: It is an expertise that not every psychologist and social worker shares, is that correct?
Mr Spooner: Yes, that's right, sir.
Judge: And I said in a published judgment in 2010 that, in my opinion, experts appointed to deal with alienation cases should have some experience and expertise in that area.
Mr Spooner: Yes.

190. Mr Hadden suggested to him that he had set out his analysis of parental alienation as a theme and that passages he had picked out of the literature all related to parental alienation. He had failed to consider and explore other possibilities.

Mr Hadden: I am right, aren't I, that there is no analysis section in your report?
Mr Spooner: There's nothing entitled "analysis".
Mr Hadden: I'm right also, aren't I, that other than parental alienation you have given no consideration to any other factors which might cause this child harm.
Mr Spooner: Yes, I've given considerable consideration of those factors. I have reported my opinion on the case.
Mr Hadden: Where would I see you giving consideration in your report to any of those other factors?
Mr Spooner: It's not in there. I consider it to be a case of alienation and I've said so.
Mr Hadden: And that's your view.
Mr Spooner: Yes.
Mr Hadden: It is alienation, it's alienation, 'it's alienation?
Mr Spooner: Yes. There's not a better explanation for it, in my opinion.

191. Mr Spooner was at pains to point out that he has not concluded that this is, beyond any shadow of a doubt, a case of parental alienation. What he is saying, he told me, is that D's position 'fits the bill'. He said,

> 'I have not reached a decision as to how D has been influenced in relation to the relationship with his father, what I'm saying is that his position fits the bill for an alienated child, however that has come about…this child is showing clear and unmistakable features of being an alienated child. He has found himself in a position, for whatever reason, whereby he has severed a secure attachment, a secure primary attachment. That cannot be considered anything other than harmful and unless that situation is reversed he will continue to be harmed.'

192. Mr Hadden suggested to Mr Spooner that the fact that in 2016 the father had formed a relationship with Ms A was a 'factor for change' so far as D was concerned. Mr Spooner agreed that that was possible. Mr Hadden pointed out that this had not been referred to in Mr Spooner's report. Mr Spooner agreed.

193. Mr Hadden also made the point that ‘adolescents at 14 or 13 and a half often turn around and rebel against their dads’. Mr Spooner responded, ‘Yes, but they don’t say that their dad tried to kill them and is having sex with school kids’, a reference to claims D has made in this case and to which I referred earlier.

194. Mr Hadden was particularly critical of Mr Spooner’s acceptance of the work of Richard Gardner:

> Mr Hadden: Lots of psychologists who debunk what Gardner would say – you’ve nodded quickly – state that, firstly, it is not a science, and we can talk about that as much as you wish, but, secondly, one of the fames of Gardner is that he fails to deal with the actual reality, the impact on children and the impact on adults of a relationship breaking down.
> Mr Spooner: Gardner’s at fault for a number of errors in the way he went about his work, and there are a number of criticisms of him. The evidence of those eight features, whatever you want to call them, is compelling and international, whatever you think of Gardner.
> Mr Hadden: Yes, but it is not accepted internationally, is it?
> Mr Spooner: Yes, it’s accepted internationally, just not as a psychiatric diagnosis [i.e. as a syndrome].

195. Mr Spooner agreed with Mr Hadden that alienation can happen accidentally and unintentionally.

196. In my judgment, Mr Hadden’s cross-examination of Mr Spooner was unexceptional. He put his client’s case and put it well. Although it would have been preferable had he not used the word ‘hobbyhorse’, the word is not a term of abuse. Mr Spooner made no complaint about that word at the time. I was surprised, therefore, to receive an email from Mr Hadden before court on 5th October (the final day of this hearing) in which he copied to me an email he had received from Mr Spooner the previous afternoon. The email had been sent at 16.33pm, within an hour of Mr Spooner completing his evidence. The content of Mr Spooner’s message comprised just one word: “Muppet!”. Mr Hadden has assumed that his use of the word ‘hobbyhorse’ may have been the prompt that led to Mr Spooner sending this email.

197. The email was gratuitously offensive. It was unprofessional. It should not have been sent. I considered with the advocates how I should deal with it. I also had a conversation with the Family Division Liaison Judge for the Midland Circuit, Mr Justice Keehan. Having taken account of the views expressed to me I came to the conclusion that it would not be appropriate to discount the whole of Mr Spooner’s evidence, give permission to the parties to instruct an alternative expert and list the matter for a retrial. The delay in taking that approach would have been wholly

disproportionate. These proceedings have already been ongoing for almost two years. Putting the case back for what could easily have been more than another six months would not have been in the best welfare interests of D for whom these proceedings have already been ongoing for far too long. Clearly it will be necessary for me to take account of Mr Spooner's ill-advised comment when I come to evaluate the weight to be attached to his evidence.

198. Earlier in this judgment I noted the difficulties that can arise for the court in trying to impose a solution on an unwilling child – and especially an unwilling alienated teenager. During his oral evidence I had this exchange with Mr Spooner:

> Judge: How do you make a 13-year-old, even if I were persuaded that the 13-year-old should live with his father, how do you actually make that happen as the judge? It is easy if he is a seven-year.
> Mr Spooner: Yes I agree, your Honour, and I agree that such a move is potentially fraught, but what the science is crystal clear about is that leaving a child in the care of an alienating parent just perpetuates harm and therefore an attempt to rescue the child from that situation is better than leave the child there.'

199. There is one final point that I must address so far as concerns Mr Spooner's assessment of D. I noted earlier in this judgment that in 2010 D was diagnosed as suffering from autism spectrum disorder. Mr Spooner does not agree with that diagnosis. In his report he says that,

> '18. Adolescents with autistic spectrum disorder stand out like a sore thumb. D did not present with any marked features of ASD, nor did he report any. He is socially well-adjusted and popular, he presents with a good range of age-appropriate social communication skills and he is not reported to display any of the usual behavioural manifestations of ASD.
> 19. His diagnosis is old and needs refreshing, and in my opinion any ongoing traits or symptoms of ASD that D does have are sub-clinical and they do not cause him any marked distress or impairment in his normal functioning and routine. I do not think a diagnosis of ASD is useful for D now. I have read his medical records and while some ASD-like behaviours were noted in 2010 by the paediatrician, I would conclude that he has largely grown out of this now or else there was another explanation for those behaviours being manifested when he was five.'

200. Whatever may be the ultimate outcome of these proceedings it is clear that the question of whether D does in fact suffer from ASD is a question that needs to be reconsidered. I give permission for a copy of this judgment and of the reports of Mr Spooner to be provided to D's GP and to any consultant to whom he may be referred.

Assessment of the mother

201. Mr Spooner goes on to undertake an assessment of the mother. He begins by making the point that given her presentation, communication, academic achievement and work history, he did not consider it necessary to formally assess her cognitive functioning. He has no concerns about her level of intelligence in terms of her parenting and safeguarding capacity.

202. As noted earlier, from 2008 until 2016 D was in the care of his father. In 2016 a shared care arrangement was implemented. Mr Spooner explored with the mother how this had come about. She informed him that D had complained that his father was abusing him, twisting his ears and slapping him. D started to talk about wanting to kill himself. Then he said he didn't want to see his dad. She told Mr Spooner that D 'started alleging physical abuse in January 2016 but I'd seen him doing it before this and no-one believed me'.

203. Notwithstanding an earlier finding by Recorder McLaren QC that the father had not raped the mother, the mother told Mr Spooner that 'he did rape me in our marriage but no one would believe me. D was a few weeks old at the time.'

204. Mr Spooner sets out in some detail his conclusions concerning the assessment of the mother. He says,

> '226. As noted above my opinion is that D is presenting with clear and unmistakable features of an alienated child, since being in the care of his mother and her partner. As can be seen from my literature review above, parental alienators do not always have personality disorders or mental illness. Alienation can occur for a number of reasons, and so the absence of mental illness or personality cannot be seen to be synonymous with the absence of risk of alienation.
> 227. An often overlooked pathological process in alienation is that of hatred, and again I have commented on this in my literature review above. I could not rule that out here. Conflict can often be resolved. Pathological hatred seldom can, and if that process is at play here then the prognosis for D is dire without robust Judicial and professional influence.
> 228. The historic papers in this case, especially the Judgments, give clear rise for concern about the mother's ability to act in a child-focused way in the past. The CAFCASS officer was concerned about D should he not reside with his father.
> 229. I am afraid to say that D's extreme position in relation to his father can only have come about with some sort of support or influence, either intentionally or unwittingly, by another adult. Given that he resides with his mother and her partner, and given that he has wholly aligned himself with them and his mother's extended family and rejected his father and his extended family, I can only conclude that D's position has somehow or other been influenced by her.
> 230. What is also interesting, as will be seen below in my assessment of the father, is that D was completely refusing to see his father until recently but the mother allegedly said to the father "leave it with me, I'll talk him round", and soon after this he saw D who allegedly "switched to being just like the old D" within minutes.

> 231. If he has told the truth about this then it would appear that the mother has a considerable amount of influence over whether or not D sees his father.'

205. Mr Spooner expresses concerns about the mother both in terms of her part in D becoming alienated from his father and in terms of restoring a meaningful relationship between D and his father. He says,

> '240. As noted above, my opinion is that D is presenting with clear and unmistakable features of an alienated child, since being in the care of his mother and her partner…
> 243. I am afraid to say that D's extreme position in relation to his father can only have come about with some sort of support or influence, either intentionally or unwittingly, [by] another adult. Given that he resides with his mother and her partner, and given that he has wholly aligned himself with them and his mother's extended family and rejected his father and his extended family, I can only conclude that D's position has somehow or other been influenced by her.'

Assessment of the father

206. Finally, Mr Spooner sets out his assessment and opinion in respect of the father. He concludes that the father is not suffering from any features of mental illness or personality disorder. He notes that, like the mother, the father has suffered from depression in the past and that could have had an impact on his parenting. However, his depression is in remission and there is nothing obvious from a psychological perspective that would affect his capacity to understand and meet D's needs. In Mr Spooner's opinion, therapeutic input is not indicated.

Section 37 report

207. On 12th April 2018, I ordered the local authority to undertake an investigation into D's circumstances pursuant to the provisions of s.37 of the Children Act 1989. That work was undertaken by social worker Miss S. Her report was completed on 9th July 2018.

208. Miss S has been a qualified social worker since the year 2000. She has worked for this local authority since June 2017. Miss S acknowledges that this case raises concerns about parental alienation. Although Miss S said that she has experience of dealing with other cases in which parental alienation was alleged, taking her evidence as a whole I am doubtful that she has any significant experience or expertise in this particular area. She accepted that she has not undertaken any recent (within the last ten years) training courses on this topic. Whilst I do not doubt that Miss S has dealt with this case to the best of her ability and in a way she considered appropriate (supported, it would appear, by her Manager and by the Deputy Head of Service), it is right to acknowledge at the

outset that there are significant shortcomings with this piece of work. I have not been greatly assisted by Miss S's report.

209. One of the most disturbing aspects of Miss S's work was her failure to acquaint herself adequately with the relevant background papers. As I noted at the beginning of this judgment, in the period from 2008 to 2012 there were several contested hearings between the parents concerning D. Those hearings took place before different judges. One of those judges, Recorder McLaren QC, rejected all of the mother's allegations of violence by the father, including an allegation of rape. He also rejected her allegation that the father had physically abused D. He made a number of withering criticisms of the mother. I referred to them earlier in this judgment. It is appropriate to set them out again.

    (i) In his judgment in July 2009 Recorder McLaren QC said that, "There are serious problems with the mother's evidence when it is tested for consistency. I have been driven to the conclusion that she is determined to say and do what she regards as necessary to "win" this case. She is prepared to say things which she believes will help her cause without regard to the truth."

    (ii) In his next judgment seven weeks later, Recorder McLaren QC said, "It seems to me that her concern to have as much contact as she could was not primarily influenced by her belief of what was in D's best interests but by her desire to make sure that she did all in her power to "win" the impending battle with the father."

    (iii) In that same judgment, Recorder McLaren QC said, "I take the view that, despite her protestations to the contrary, there is a serious risk that, in the future, if awarded residence she would do whatever she could to reduce – if not eliminate – the contact with the father."

These are strong words. It appears to be the case that when undertaking the s.37 investigation Miss S was completely unaware of those observations and findings.

210. Findings on issues of fact, even those made several years ago, remain binding on this court and on this social worker. Assessments made by the court do not necessarily have the same enduring nature. It is in my judgment possible for a judge to be highly critical of a parent at one hearing and for another judge to take a different view of that parent at a later hearing. In so saying, I am in no doubt that the starting point for the second judge is that the assessment of the parent made by the first judge was correct. However,

it may be that there is credible evidence that in the intervening period there has been a significant change in that parent's circumstances. For example, someone who may once have been dependent upon alcohol and/or drugs may have been able, with professional help, to change their lifestyle. In such cases, a change of circumstances must be proved and is not to be assumed.

211. In this case, Miss S's failure to read the papers carefully has meant that previous findings of fact and their current significance have not been taken into account. Previous judicial assessments of the mother (in particular) have also been overlooked and therefore have played no part in conclusions reached when undertaking an up to date assessment of her. When taken together with Miss S's obvious lack of knowledge and experience in the area of parental alienation, the judgments she has reached become highly questionable.

212. Another significant criticism of Miss S's report is that it appears to be her approach not that a child's disclosures should be heard and taken seriously but that they should always be believed and action taken on the assumption that they are true. She made the point that D has been consistent in his disclosures. It is clear that she has not considered the possibility that what she regards as consistency could, in fact, simply be rehearsed. In her oral evidence Miss S was very open about the fact that she has not considered whether D is being untruthful. 'I do believe his account', she said. She also appeared to take the view that it is not D's welfare that is paramount but his wishes and feelings.

213. Miss S's whole approach is premised upon the belief that D is the victim of repeated acts of physical abuse by his father. She was asked whether she had read Mr Spooner's account of his second meeting with D, set out in his addendum report. She said she had not. Of even greater concern is that she said she had not at any point seen D with his father.

214. With respect to this finding of fact hearing there is, I regret to say, nothing whatsoever in Miss S's report that assists me in determining whether any of the factual issues I am investigating are true. Neither would I be assisted by this report if I were dealing with welfare issues. The report is based upon an inadequate reading of the background papers, a flawed understanding of the background history, a lack of relevant experience or expertise in dealing with cases of parental alienation and a flawed understanding of the approach that should be taken in evaluating and responding to disclosures made by a child.

The father's schedule of findings

215. Against that background I now turn to consider the father's schedule of findings. The father seeks three findings against the mother (though the second finding sought has seven sub-clauses). The overarching finding sought is that the mother has alienated D from him.

First allegation: *The Applicant Mother has been proactive and or complicit in D making false allegations against the 1st Respondent Father, in particular that the 1st Respondent Father has physically assaulted D on 30th November 2017 and the weekend of 20/21st January 2018.*

216. The mother denies this allegation. She says she has neither been pro-active nor complicit in D making false allegations against his father. On 30th November D volunteered to her the fact that he had been assaulted. He came to her house, unexpectedly, at around 3.40pm. He was extremely upset. He said, "there is no way I am going back". His father had twisted his arm behind his back and kept raising it upwards and pushing his head down. His father had also pushed him and he had fallen backwards onto a coffee table. His left arm hurt, as did the back of his neck and shoulder. He let her have a look. She could see that there were no cuts but that his shoulder 'was just very red'. D also told her that his father had hit him in the eye with the inner side of his hand. In these circumstances many parents would take photographs of the injuries. In her statement the mother says,

> 'I did not take photographs of the injury to D's back as my main concern was being there for D and making him feel ok and reassured'.

She contacted her solicitor.

217. In her first statement, in December 2016, the mother says that in January 2015 and on previous occasions D has told her that he has been hit by his father. She says that since January 2015 D 'has informed me every couple of weeks something has occurred whilst he has been residing with the Applicant father'. If this is true, it is surprising that it was not until September 2016 that she retained D at the end of contact and not until November 2016 that she issued her present application.

218. The mother's statement that D told her in January 2015 and on previous occasions that he had been hit by his father does not sit comfortably with other evidence the mother has given. As I have already noted, the hearing bundle contains a letter from D's GP dated 1st August 2016. The GP had seen D with his mother. The mother told the GP that

'he has frequent arguments with his dad. *There has been no violence*.' (emphasis supplied) In her oral evidence she said that it was in December 2016 that D had first raised an issue concerning his father's violence. The mother's various statements on this issue cannot all be true.

219. In this same statement (December 2016) comments made by the mother resonate with findings made by previous judges between 2008 and 2012. She says that D 'has always indicated to me that he does not want to reside with the Applicant Father and he wishes to reside with me'. She also says that D has made 'constant threats to kill himself' and that he has indicated to her 'on a number of occasions that he will jump off the balcony of the Applicant Father's residence if he is not returned to my residence'. It is unclear whether she is implying a link between his desire to live with her and his threats to self-harm.

Second allegation: *The Applicant Mother has negatively influenced D's views of the 1st Respondent Father, which has resulted in D becoming alienated from his father. Examples of D's behaviour include the following:*

(i) D presented to Dr Spooner, with what seemed like a pre-prepared and well-rehearsed script of all the things he wanted to tell Dr Spooner about his father. Notwithstanding D's very positive relationship with his father;

220. The mother denies presenting D with negative views about his father leading to him becoming alienated from his father. On the contrary, she insists that she has done her best to support and promote the father/son relationship. She has acted on advice received from the guardian and the social worker and has on occasions gone so far as to physically force D to spend time with his father.

221. The mother denies that she has coached D or provided him with a pre-prepared script. She does not accept Mr Spooner's assertion that D has had a very positive relationship with his father in the past. She states that concerns were noted at school when D was living with his father.

222. In her written evidence the mother says that if Mr Spooner,

> 'believes what D informed him was well-rehearsed I believe it is because D has spoken to a number of professionals in respect to his experiences whilst residing with the Respondent. I confirm D has spoken to numerous teachers in two schools, the Guardian, a school counsellor and the therapist who he is seeing at the moment. I sadly believe D's emotions are gone and he feels the need to exaggerate greatly to get his point across.'

Third allegation: *(ii) D has made numerous allegations against his father that have not been made elsewhere. This includes D telling Dr Spooner that his father has had road traffic accidents whilst drunk whilst D was in the car, putting a belt round his throat and nearly killing him, having sex with school children. Despite these very serious allegations, D displays no signs of fear in the company of his father.*

223. The mother accepts that D has made allegations to Mr Spooner that he has not made to anyone else including, for example, his claim that his father has been involved in road traffic accidents when under the influence of alcohol. She makes the point, correctly, that the father has a conviction for driving whilst under the influence of alcohol. She goes on to say that so far as she is aware D does not know about that conviction. I am satisfied he does know about that conviction. That raises a concern about where he came by that information and in particular whether it was the mother who shared that information with him.

Fourth allegation: *(iii) D shows no signs of emotional distress when relaying alleged incidents about his father, in a matter of fact way. This includes allegations that his father has nearly killed him. D displays no signs of trauma.*

224. The mother does not disagree with D's 'matter of fact' demeanour when making these disclosures. She says that D 'does communicate in this way as noted in the Guardian's most recent analysis.'

Fifth allegation: *(iv) D promotes an exclusively positive and glowing impression of his mother, her partner and her family, whilst he presents a wholly demonised view of his father and his wider family.*

225. The mother acknowledges that D's relationship with her is positive. She says she does not allow D to denigrate his father or the paternal family but does her best to promote those relationships. It is striking that Mr Spooner's experience was very different. Throughout his first report he repeatedly makes the point that during their discussions D lost no opportunity to denigrate his father.

Sixth allegation: *(v) D displays highly aggressive and violent behaviour towards his father and uses inappropriate and offensive language to his father.*

226. The mother says she does not accept that D displays highly aggressive or violent behaviour towards his father. She points out that this was not mentioned at all in any of

the meetings with the guardian or Mr Spooner prior to the events of 30th November 2017 and 19th to 21st January 2018. Neither was it mentioned in any text messages sent to her by the father.

Seventh allegation: *(vi) D's interest in spending time and undertaking activities with his father diminished, after the significant increase of contact with his mother. When spending time with his father, D would contact his mother purporting not to be enjoying himself with his father and how much he misses his mother and couldn't wait to be with her.*

227. The mother does not accept that the D has lost interest in spending time with his father since 2016 when he began to spend more time with her. She says that D had wanted to spend more time with her for a number of years but that the respondent had not supported this.

228. Notwithstanding the fact that the mother does not accept the point, it is in my judgment clearly established that since D has spent more time living with his mother and her partner, T, his relationship with his father has deteriorated. It does not necessarily follow that there is a link but the evidence strongly suggests that there is.

Eighth allegation: *(vii) D challenges his father, regarding the father's alleged ill treatment and behaviour towards the mother and or the mother's family.*

229. The mother says she is unable to comment on what happens when she is not present. However, it is the case that whenever the father has shouted at her when D has been present, D has told him not to speak to her like that.

The final allegation is that *'As a direct result of the Applicant's actions, there has been periodic disruption and unilateral changes to contact, leading to termination of contact between D and the First Respondent father.*

230. The mother denies the suggestion that she has prevented D from having contact with his father. She says she has at all times followed and acted upon professional advice and has always abided by court orders. Mr Hadden has forcefully made the point that the mother supports contact between D and his father. It was not her, it was the court, more particularly District Judge Douce, who stopped contact. More recently contact had stopped on the instruction of the social worker.

Discussion – the findings sought by the guardian

231. The events to which the guardian's schedule of allegations relate occurred on 30th November 2017 and during the weekend of 19th to 21st January 2018. For the most part there is a straight conflict between the evidence given by D and that given by the father and his partner, Ms A.

232. There were no independent witnesses to these events. The closest one comes to finding an independent witness is with respect to the incident said to have taken place on 20th January when it is alleged that the father pushed D causing him to fall backwards over a coffee table. If I find that allegation proved then it will follow that so far as concerns that incident, in particular, the court accepts D to have given a broadly truthful account and, by contrast, that the father and Ms A have given an untruthful account. Determining issues of credibility with respect to that incident may give the court pause to ask itself whether, if telling the truth about one incident, the court can be satisfied that it is more likely than not that D's evidence in respect of the other incidents is equally credible. Similarly, if the court is not persuaded that D is telling the truth about this incident then it may be a relatively short step for the court to conclude that D's evidence generally is unreliable.

233. The evidence before the court with respect to the three linear marks observed on D on 26th January is, at best, unsatisfactory. Although Dr G says that she observed three lines on the back of D's right shoulder, her description of what she saw is poor and, in my judgment, of little forensic value. She does not give the full dimensions of each line. She does not say what the distance was between each line. Her reference to 'red bruises' is vague and inexact. Was she talking about the three lines? Was she talking about the area of skin between each line? She examined D on 26th January. Although the dating of bruises is notoriously difficult and imprecise, Dr G does not even go so far as to hazard a guess as to the age of the marks – in this case an important point because it is said that D sustained these injuries on 20th January 2018 yet he was not examined by Dr G until 6 days later on 26th January. Are the marks said to have been observed on 26th January compatible with an event said to have occurred on 20th January?

234. It is implicit in Dr G's evidence that the three linear marks on the back of D's right shoulder must have been caused when his shoulder collided with the coffee table. Yet Dr G did not see – and still has not seen – the coffee table concerned or a photograph of it. How can she therefore say with such certainty that it was contact between shoulder and coffee table that caused these marks?

235. The photograph of the injury does not assist. Although I was told that one photograph had been taken, in his ABE interview D says that whilst at the hospital on 26th January 'they took me behind the curtains and took pictures'. At the time of the hearing it was not clear who took the photograph. It was not clear whether the person who took the photograph has a particular skill in taking medical photographs. It was not clear how many photographs were taken. Since the completion of the hearing the NHS Trust has now confirmed that three photographs were taken and that all three were taken by Dr G. It is not known whether she has any particular skill or training in the taking of medical photographs. The answers to all of these questions should have been made known to the parties before the finding of fact hearing began.

236. The purpose of taking medical photographs is so that there is a contemporaneous visual record of the injury sustained. It adds significantly to any written description given by a treating clinician. In this case the one relevant photograph (the photograph of the back of D's right shoulder) does not show any injury or mark. That is not just my judgment. It is also the conclusion of the independent medical expert witness, Dr Austin.

237. In this case, therefore, we have a description of the three marks which is significantly lacking in important detail supported by a photograph which is, I regret to say, utterly useless.

238. As I noted earlier, there is also the concerning fact that in arranging for the alleged injuries to be photographed, Dr G failed to comply in any meaningful way with the guidance given to paediatricians in the *Child Protection Companion* published by the Royal College of Paediatrics and Child Health.

239. That is the material that was placed before the independent medical expert, Dr Austin. It was his task to express an independent expert opinion on the causation and timing of an injury he had not seen at first hand, which he could not see on the only medical photograph produced (because the photograph did not reveal the three lines said to have been observed by Dr G) and in respect of which he had been given an inadequate description (see my earlier critique of Dr G's description of the three marks). He could not have been criticised had he said that the material before him was not good enough for him to be able to express an expert opinion. But that was not the position he took. Put simply, Dr Austin's position appears to be to say, 'I accept that Dr G has seen what she says she has seen, I accept that her interpretation of what she says she has seen is a reasonable interpretation, I therefore agree with her conclusion that these three marks

are indicative of a non-accidental injury'. With all due respect to Dr Austin, that approach falls below the standard one would normally expect of an expert witness.

240. The third independent witness is social worker Ms H. In her police witness statement Ms H says that she asked D if she could look at his shoulder. He agreed. He pulled the collar of his shirt across his left shoulder. She could see 'faint red marks on top of his shoulder'. It is a moot point what she meant by 'faint red marks' and 'on top of his shoulder' and how that fits in with the depiction of the three lines on the body map. Like Dr G, Ms H gives no detailed description of the marks. She cannot say, by reference to the photograph, that what she saw is what Dr G saw because the marks are not visible on the photograph. It is not clear to me that what she describes is what Dr G describes and in any event there are, as I have noted, serious deficiencies in the description given by Dr G. Miss H also notes that D complained about pain in his shoulder going up to his neck. It is not clear whether that pain is consistent with a fall onto this coffee table. Even if it is, as I noted earlier, Ms A reports that even before this incident is said to have occurred D was complaining about pain and soreness in his back.

241. I do not consider D to be a wholly honest and credible witness. As I have noted, his mother accepts that he has a tendency to exaggerate. He described to Mr Spooner several instances of physical abuse that did not find their way into the guardian's schedule, including what amounts to an allegation of attempt murder as a result of his father trying to strangle him with a belt. It is clear that D has an axe to grind. He seeks to grind it at his father's expense. I do not consider D to be a reliable witness. On the contrary, I find him to be a very unreliable witness.

242. In contrast, I find the father and Ms A to be credible, reliable and above all honest witnesses. In the father's case, I am not the first judge to find him to be an honest witness.

243. I am not satisfied on the simple balance of probabilities that the alleged injury described in the report of the child protection medical examination is a non-accidental injury inflicted by the father.

244. I have already given myself a Lucas direction. I accept that it does not follow that because I have not believed D's account of the alleged injury to his right shoulder that he is necessarily being untruthful in his account of the other incidents said to have occurred on 19th and 20th January or the incident said to have occurred on 30th November 2017. However, I do accept the mother's assessment of D as being prone to

exaggeration. I am not satisfied on the simple balance of probabilities that any of these six incidents described in the guardian's schedule of findings occurred as alleged. Like Recorder McLaren QC in 2009, with respect to each of the six allegations contained in the guardian's schedule, I answer 'Rejected. Father's evidence of denial accepted'.

245. Adopting the binary approach, as the guardian has failed to prove any of these allegations it follows that as a matter of law the facts asserted are to be treated as not having happened.

Discussion – the findings sought by the father

246. The evaluation of the allegations set out in the father's schedule is more complex. A key difficulty which now faces me concerns the weight, if any, which I should attach to Mr Spooner's evidence in the light of his ill-advised and inappropriate email to Mr Hadden. It is appropriate that I should set out Mr Hadden's position as set out in his written closing submissions. He says,

> 79. The court is reminded of the observations of Butler-Sloss (P) in *Re U: Re B (serious injury; standard of proof)* [2004] 2 FLR 263 at para 23iv: "The court must always be on guard against the over-dogmatic expert, the expert whose reputation or amour-propre is at stake, or the expert who has developed a scientific prejudice"
> 80. It is submitted that Mr Spooner falls within the class of expert. His answers in cross examination to my questioning (and indeed to Mr Finch's questioning), support the view that this is an expert who apportions alienation as the answer to all ills, without giving due consideration to other factors or influences. He is reluctant to analyse the evidence or give weight where it diverts from his opinion.
> 81. It is submitted that his choice to email counsel for mother after the hearing and state in the subject box "Hobby horse?" [and] in the message section "Muppet" was both highly unprofessional and grievous.
> 82. Miss Venters QC was right to admonish by confirming that all advocates on the front bench were "astonished" by his actions. His actions must be considered by the court within the broader canvas of his evidence. Whilst this was clearly 'an error of judgment' and can not be ignored, it taints the entirety of his evidence and giving further credence to my accusation that he is not a balanced or credible witness.
> 83. That said, he cannot assist the court with whether the allegations which D alleges against his father are true.'

247. Mr Hadden's submissions are understandable and, in the circumstances, not surprising. I do not criticise him for making them. However, they do need to be put in context. To do that, two particular points need to be made.

248. First, whilst I do not condemn Mr Hadden for using the word 'hobbyhorse' it does suggest a particular view towards the whole concept of parental alienation. His use of the word hobbyhorse is reminiscent of *A Local Authority v TE & Ors* [2010] EWHC B2 (Fam) in which counsel for the local authority described the expert in that case, Dr Kirk Weir, as an 'alienation evangelist' (see §93). I see little to choose between the two descriptions. Both are pejorative expressions and suggest a highly sceptical view of the concept of alienation. That that scepticism is something with which practitioners in this area, such as Mr Spooner, still have to contend is regrettable.

249. Second, whilst I also understand why Mr Hadden submits that Mr Spooner is a dogmatic expert, my understanding of the point being made by Butler-Sloss P *in Re U: Re B (serious injury; standard of proof)* [2004] 2 FLR 263 is not that the dogmatic expert's opinion should be completely ignored simply on the basis that he is dogmatic but rather that the court should tread carefully in deciding what weight (if any) to attach to the evidence of that expert.

250. Mr Hadden criticises Mr Spooner for failing to consider a range of possibilities which might explain the sad history of this case, instead insisting that this is a case of an alienated child. Although he does not say so in these terms, his position appears to be that Mr Spooner is the archetypal dogmatic expert whose views should be wholly discounted. I don't accept that analysis. I have come to the conclusion that on a proper analysis of the evidence in this case the question is not whether Mr Spooner is being dogmatic but whether his assessment is unreliable. In my judgment it is not. Whilst Mr Spooner's inappropriate email to Mr Hadden requires judicial condemnation it does not mean that his assessment and conclusions should be simply dismissed out of hand.

251. As I have sought to demonstrate within this judgment, there is a body of research evidence, and an increasing body of jurisprudence, which accepts that in some cases children do become alienated from a parent and that sometimes that alienation is caused, deliberately or unwittingly, by the other parent ('parental alienation'). Whilst I do not accept Gardner's hypothesis that there is a disorder known parental alienation syndrome (which I note in passing is nowhere referred to in either ICD 10 or DSM IV) I do accept that in some high conflict private law disputes children do become alienated from a parent and that sometimes – perhaps more often than not – that is caused by the behaviour of the other parent.

252. The history of this case reveals a mother whose desire to have D in her care was so strong that she would not consider letting the truth get in the way of her attempts to

achieve her objective. That is the gist of the findings made against her during the first tranche of litigation between these parents. Her initial statement in support of her present application, dated December 2016, suggests strongly that nothing has changed. She still wants to have D living with her. She still seeks to persuade professionals that he wants to live with her and that he is at risk living with his father. She said,

> 'I wish for the child to remain in my long term care due to the concerns which he has raised whilst he has been residing with the Applicant Father…The child on a number of occasions has informed me and various professionals mainly his school teachers that he is not happy residing with the Applicant Father…The child in approximately January 2015 has informed me that he is been hit by the Applicant Father…Since this occasion the child has informed me every couple of weeks something has occurred whilst he has been residing with the Applicant Father. The child has indicated the Applicant Father shouts at him on a regular basis which results in him crouching in a corner of the room in fear…The child has always indicated to me that he does not want to reside with the Applicant Father and he wishes to reside with me…The child has also indicated to me on a number of occasions that he will jump off the balcony of the Applicant Father's residence if he is not returned to my residence…'

253. Echoing the findings made in 2009 by Recorder McLaren QC, in her closing submissions Miss Venters submits that,

> 'The Mother's evidence is driven by her desire to achieve her objective which she has had continuously throughout both sets of proceedings. It is nothing less than to undermine the Father's relationship with D and to achieve the residence order she has always sought.'

I accept that submission.

254. Recorder McLaren QC's words in 2009 were indeed prophetic. He said, "I take the view that, despite her protestations to the contrary, there is a serious risk that, in the future, if awarded residence she would do whatever she could to reduce – if not eliminate – the contact with the father." That is exactly what has happened.

255. Although I set out earlier the findings sought by the father, I also indicated that the overarching finding sought is that the mother has alienated D from him. It is sufficient for me to set out my conclusions in response to that overarching finding without responding separately to each finding sought.

256. I referred earlier to the new Cafcass assessment framework for private law cases and in particular to the section headed 'Typical behaviours exhibited where alienation may be a factor'. I set out those 'typical behaviours' at §170 above. It is clear from the findings I have made, from Mr Spooner's account of his conversations with D (which I accept), from the accounts of D's conversations with social workers Miss H and Miss S and

from reports of things D has said to staff at school, that there is evidence of most, if not all, of those 'typical behaviours' in this case.

257. In the light of those 'typical behaviours' displayed by D, I am satisfied on the simple balance of probability that D has become alienated from his father.

258. I am equally satisfied that the cause of D becoming alienated from his father is the mother's behaviour as I have described it in this judgment. I am concerned that some responsibility may also attach to her partner, T, though as he has not provided any evidence, written or oral, it is not possible for me to make a finding on that point.

259. I have no difficulty at all in making those two findings. It is the third question that is the most difficult. Has D become alienated from his father as a result of a deliberate course of conduct by the mother or has she unwittingly behaved in a way that has caused the alienation? I have reflected very carefully on that issue. The assessment and prediction made by Recorder McLaren QC, albeit some nine years ago, have proved to be remarkably accurate. The mother has always had a burning desire that D should live with her. She has not let the truth stand in the way of her ambition. Neither, I fear, has she allowed consideration of the potential harm to D that would likely be caused by the obsessive pursuit of her ambition, stand in her way. I am satisfied that in this case this mother has deliberately alienated D from his father. I find accordingly.

Conclusion

260. Neither of these parents is entitled to legal aid. Both are out of scope financially. The father told me that he has spent in excess of £200,000 on this litigation since 2008. The mother has spent over £120,000. That is an eyewatering amount of money to spend in a battle to win the heart and mind of a child. These parents now need to invest their resources in trying to undo the immense harm that has been caused to this very likeable young man. They need to do that in partnership. D needs to see them working together for his best interests. It is clear that he has seen very little of that in the past.

261. Given D's age and the fact that the process of alienation has now gone on for some two years, repairing the damage caused is likely to prove challenging in the extreme. I doubt the prospects of success are good though I have no doubt that a serious attempt must be made. It is to that issue that attention must now be turned.