



Neutral Citation Number: [2020] EWFC 36

Case No: TR17C00181

**IN THE FAMILY COURT**

Date of formal hand down: 01/05/2020

**Before :**

**THE HONOURABLE MRS JUSTICE ROBERTS**

**Between :**

**A LOCAL AUTHORITY**

**Applicant**

**- and -**

**(1) X (acting through her litigation friend, the  
Official Solicitor)**

**Respondents**

**(2) Y**

**(3) Z (a Child) through his Guardian**

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**Mr Simon Green, counsel**, (instructed by **A LOCAL AUTHORITY**) for the Applicant  
**Ms Abigail Bond, counsel** (on behalf of the Official Solicitor) for the First Respondent  
The Second Respondent, **Y**, appeared in person supported by a McKenzie Friend  
**Mr Hugh Cornford, counsel** for the Guardian

Hearing dates: 27 January to 4 February 2020

(Draft judgment distributed on 3 April 2020)  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

## **Mrs Justice Roberts:**

1. This is an application by A Local Authority for a care order pursuant to section 31 of the Children Act 1989 in respect of Z, who is now six and a half years old. Z is the only child of X and Y, the first and second respondents to these proceedings. Z is presently living in the full-time care of his mother in a supported living placement. He is having contact with his father on a regular basis, although it is right to record at the outset that those contact arrangements have not been without their difficulties. An important headnote to this judgment, and one which I record at the outset, is that it is no part of the local authority's case that Z should be removed from the care of either of his natural parents. The care plan for Z is that he will remain living with his mother during his minority in a fully supported placement which meets all of their particular needs whilst maintaining his ongoing relationship with his father.
2. The facts which lie at the heart of this application, in their current presentation, are highly unusual, if not unique. The statutory obligations imposed on the local authority in terms of the duty of care which it owes to Z have presented some very significant challenges. The forensic process has itself thrown up challenges which have had to be carefully managed at every turn in order to accommodate the particular needs of Z's mother who, for a number of reasons, has very particular vulnerabilities in the context of this litigation. She was born profoundly deaf to impoverished parents and has had no formal or recognisable speech whatsoever since her birth. The circumstances of her early life meant that she did not receive even basic or rudimentary help and assistance to come to terms with these difficulties and her interaction with the wider world around her. She has clearly formulated basic coping strategies which she has developed over the years in order to function in an adult world where hearing and speech are the very essence of communication. Y told me that over the years they had together developed an informal means of communicating with one another which enabled the process

of daily life to continue. He has also given me examples of instances where X has displayed intelligence and problem-solving skills. She clearly has both a sense and a memory of place and understands the day to day realities of her life as it is lived with Z. She is presently taking care of all his day to day needs and there are no immediate concerns in relation to the care which she is providing with support from those who live with her in the shared placement. For reasons which will become apparent, she is represented in these proceedings by the Official Solicitor following a finding that she lacks litigation capacity.

3. I have had the benefit of expert evidence from both Dr Austen and Dr C, each of whom is an experienced clinical psychologist with particular experience of working with deaf adults who have mental health problems and/or learning difficulties. They were initially identified as professional experts who would be most likely to be in a position to assist the court in terms of its understanding of X' ability to communicate generally and in order to ascertain her wishes and feelings in the context of establishing the facts and making welfare decisions for her own and Z's future. I shall return to the substance of their evidence in due course. What is very clear to me is that over the course of this litigation, and with the benefit of all the professional assistance she has been receiving since the onset of these proceedings, her ability to communicate and make herself understood has improved significantly. The picture of the woman which emerges from the early reports when this litigation commenced at the beginning of 2017 is very different from that which emerged during the course of the oral evidence which I heard during the final hearing.

*Some background*

4. X is now 31 years old. She met Y in her country of origin when she was 21 and he 66 years old. He is now 76. They married outside of the UK in January 2013. This was a third marriage for Y who has two adult children from his first marriage which lasted some twenty odd years. When that marriage broke down, he met his second wife whilst on business abroad. With the demise of his second marriage after some eighteen years, he travelled to

X's country of origin for a holiday where he met X. According to the account which Y gave to an independent social worker who carried out an early parenting assessment, at the time they met, X was working casually "on the streets" carrying out menial tasks such as collecting rubbish. He has subsequently given me an account of her mother having "sold" her when she was a teenager. She was apparently sent off to work in the country's capital city as a domestic servant and her mother was paid US\$14 per month for her daughter's services. It was on any view a desperate existence. At that stage X could neither speak nor hear although it appears that she was able to communicate through a mobile telephone by dialling numbers and using vibrations from the phone. Y accepts that he was distressed at the demise of his second marriage. He accepts that he had almost financial security at this point in his life having just settled the claims of his second wife.

5. Having met X whilst travelling, he invited her for a meal and their relationship developed from that point. Z was born outside of the UK in March 2013. At that time the family appears to have been living a somewhat peripatetic lifestyle. Over the next four years they lived on different yachts moored at a local yacht club. Y had enjoyed a professional career in engineering over a number of years. Following the start of his relationship with X, it seems that he was earning a living cruising and carrying out various yacht repairs based in and around a yacht club.
6. Throughout this period, he was engaged in a protracted four-year dialogue with the UK immigration authorities with a view to returning to England with his family. He put in place various arrangements to help X with her communication issues. He enlisted local help in order to teach her rudimentary reading skills. He took her to a hospital to see what could be done about her hearing. The family eventually moved to England in 2015 and set up home in accommodation lent to them by a friend. Y planned to set up a takeaway restaurant in which X was to do the cooking. For these purposes he secured some local premises which he was converting. The business was to be known as "*Baby Dragon Food*" and I have seen a number of photographs

which he has provided to the court showing the extent of the work he had put in.

*The public law proceedings*

7. These proceedings began their journey through the Family Court when, on 13 March 2017, this young mother presented at Z's nursery school exhibiting symptoms of physical pain and distress. She could not properly articulate or verbalise her predicament because she did not have the means of communication to do so. Nevertheless, it was clear to the nursery worker who met her at the nursery school on that morning that she was in a significant amount of physical discomfort. She was "hobbling", holding her back and was observed to be supporting herself up the sloping path to the nursery school entrance by holding the side wall which ran alongside. When offered a seat inside the school, X was plainly distressed and visibly crying. She was asked if someone had hurt her and she made a series of gestures as if she was punching a static ball. She was pulling at her coat and pushing her arm behind her back. She showed the nursery worker a picture of Y on her mobile telephone and appeared to be gesturing that he had been drinking. The photograph on her mobile telephone appeared to show Y asleep or unconscious on a bed. Without any spoken word, she was making various gestures to indicate what the nursery worker interpreted to be "shouting, pulling of clothes, fighting and drinking". I heard oral evidence from the nursery worker who observed all of this. She made a contemporaneous written account at the time and she came to court to speak to that account. Insofar as she was accurately describing to me what she observed on that occasion, I have no reason at all to doubt what she told me. There were at that stage no extant proceedings involving Z or this family. There were no 'red flags' which might have given rise to any concerns or caused the nursery school to watch for any such signs. The nursery worker told me that she saw X often when she brought Z to school and she would greet her just as she would any other parent.
8. On the following day, X attended a police interview during the course of which, using symbols from material supplied from the widely used Widgit

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Literacy Symbols pack, she was able to identify symbols which enabled the police to create a form of narrative which suggested that she might have been both physically and sexually abused by Y. It is the accuracy of that narrative which lies at the heart of this case since Y has been consistent in his denial of any mistreatment of his wife,

9. The local authority issued care proceedings on 24 March 2017 and, over the course of the next nineteen months, the matter was case managed by the Circuit Judge the Designated Family Judge for the County. Because of its increasing complexities, the matter was transferred to me in November 2018.
10. This has undoubtedly been a difficult and challenging case for all the professionals involved. As I have said, X is now represented by the Official Solicitor having been found to lack the capacity to conduct these proceedings on her own behalf. Miss Abigail Bond has represented her since the end of 2018. Mr Simon Green has appeared for the local authority and Mr Hugh Cornford for Z's Guardian.
11. The aspect of this litigation which has presented a very significant obstacle to the efficient progress of this case has been Y's' decision to conduct the litigation on his own behalf without the assistance of legal advice or representation. Throughout, he has been entitled to public funding which would have enabled him to instruct both a solicitor and barrister to represent his interests in court. Whilst I understand that he did have some advice from a solicitor in the very early stages of the litigation, he has chosen to represent himself with the assistance of a McKenzie Friend.
12. Y's conduct of this litigation has become increasingly difficult. I have accorded him a significant measure of latitude given what is at stake and his obvious focus on securing the future of his family unit. Even when it became apparent that the local authority was not seeking to remove Z from the care of his mother or to prevent ongoing contact between Z and his father, Y has been unrelenting in his condemnation of the manner in which the local authority has brought its case and my conduct of its progress towards this final hearing.

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13. At the heart of his approach to this litigation is a fundamental unwillingness to accept that X no longer wishes to remain in a relationship with him. He has repeatedly demanded that meetings be set up so that she can make her position clear and properly consider the options for ongoing family life with Z whether that is lived by his parents separately or together. He has made it plain that he does not think that X is capable of looking after Z safely even within the confines of the supported living placement where she has now settled. He has accused the local authority of deliberately depriving X of her liberty and controlling her movements so as to prevent contact with him, his McKenzie Friend and wife, and other former friends and acquaintances who knew the family before March 2017. These accusations have continued throughout despite the fact that X has been free to leave her home in the supported living placement and to go about her daily life without any apparent restriction, knowing full well how she can make contact with Y if that is what she chooses to do. His case has alternately been put on the basis that Z should return to live with him in order that they can devise a means of co-parenting Z or, most recently in the weeks leading up to this hearing, that the whole family should relocate back to X's country of origin at the expense of the local authority where X can decide whether she wishes to live with him and Z with the support of her family or separately. That has been his case since he travelled out to X's country of origin in the later stages of this litigation in order to secure from the maternal family a 'power of attorney' to act on their behalf in these proceedings.
14. His case in recent weeks has been entirely inconsistent with his earlier presentation that X's' family represented a significant risk factor to Z since they had 'sold' her into a life of servitude at a young age and/or that any suggestion of a return to her country of origin might expose X to the risk of death. In particular he has referred to the practice of 'organ harvesting' by wealthy individuals in need of transplant operations. In a written submission to the court dated 28 November 2018, he said this:

“Having lived in [X's country of origin] I am aware of what happens to vulnerable young women and children at the hands of people traffickers. They are sold for sex, or illegal adoption or, Most horrifically, killed for

organ harvesting for sale to “LEGITIMATE” medical organisations. The latter is very lucrative business. This is not exaggeration it is REALITY in [this continent]. How can UK social workers or a UK family court judge, possibly judge whether this is a real threat or not ? [The Circuit Judge] does not accept these realities as real threats to [X] if she gets deported. This denial of reality is frightening to me. It exposes the lack of international experience within the court.”

15. He has unsuccessfully appealed case management decisions which I have made since I became involved in the matter. Many of his challenges have been dismissed by the Court of Appeal as being totally without merit. Before my involvement, there were similar challenges to orders made by The Circuit Judge. He has repeatedly sent to me and to many others involved in the administration of justice at the highest level long narrative documents setting out his litany of complaints against me, the local authority and the system. He has referred in disgraceful terms to these proceedings being conducted by “a Kangaroo court” deploying “Al Capone tactics” which have fundamentally violated his human rights. He has repeatedly threatened the local authority with “a massive civil rights claim” in respect of those alleged breaches and he has repeatedly called for a meeting at which he seeks to reach agreement about the quantum of the damages to which he maintains he is entitled.
16. As this deluge of correspondence has increased in the weeks leading up to the final hearing (and, indeed, since its conclusion whilst judgment was reserved), I have had the clear impression that Y’s grip on reality, and thus his ability properly to comprehend the issues at stake, has diminished significantly. His communications are littered with capital letters, expletives and wholly unjustified accusations levelled against not only this court, the Court of Appeal and the system generally but also against the various professionals who have been involved in this litigation.
17. I have made full allowance for the fact that these have been stressful proceedings for Y as he comes to term with the demise of his marriage in circumstances where his wife has not wished to have any communication with him. For reasons I shall explain, I am quite satisfied that the absence of such communication has reflected X’s own wishes and has nothing to do with any restrictions which have been imposed by the local authority. From Y’s



perspective, his son went to school one morning in March 2017 and neither he nor his mother came home again. He has had no confidence that the local authority has been acting in Z's best interests. He has seen its stance throughout as being driven by basic human prejudice and an unwillingness to accept that neither the age difference between them nor X's obvious disability at the time of their marriage should give rise to any concern.

18. At every turn, I have sought to engage Y, to encourage him to participate in the process of parenting assessments and related alcohol-testing in order to give this court the best evidence on which to make decisions for Z's future. At the pre-trial review in November 2019, I once again encouraged Y to seek professional legal support in formulating and presenting his case at the final hearing. He has refused all such invitations. His response to my refusal to endorse his witness template (which included both me and Lord Justice Peter Jackson within the list of witnesses he wished to cross-examine) was a request that I recuse myself from further involvement in the case on the basis of 'criminal judicial bias'.
19. Y has sailed extremely close to the headwinds of contempt in terms of his conduct of these proceedings. His litigation conduct has certainly not assisted the progress of the forensic enquiry which has been ongoing in this case in order to make decisions in Z's best interests. Whilst he attended court for the first day of the final hearing with his McKenzie friend, Y soon made it plain that he did not, and would not, recognise any decisions made in relation to Z's future. He declined to take any further part in the proceedings and left the court building. He made it clear that he did not intend to submit himself for cross-examination and did not wish to ask any questions of the witnesses from whom I was due to hear. I declined to adjourn the proceedings and thus I did not have the benefit of hearing directly from Y who had made it plain that he was not going to participate further even in the face of committal proceedings. I was unwilling to take steps which would inevitably have led to further delay for this child and, with the agreement of all parties, I continued with the hearing. I am satisfied that, in Y's absence, any relevant or material questions which he might have put to the various witnesses were asked. In the main, Mr

Cornford on behalf of the Guardian took the lead in this respect but I asked several questions myself of various witnesses, including Dr Austen and X's social worker, the professional who probably knew her best in terms of the time she had spent with her.

#### *The expert evidence*

20. In this context, I bear well in mind that Dr Austen had already given evidence prior to the final hearing when she attended court on 29 June last year (2019). That appearance was in the context of enabling the court to take the next steps in this difficult litigation. Clearly, it has not been considered appropriate by any of the parties for X to attend hearings in person. She has been found to lack litigation capacity. In the context of enabling the court and the parties to understand what, if any, reliance could be placed on X's communications about what had happened to her and her wishes for the future, Dr Austen was charged with the responsibility for conducting a supported interview which was video-recorded. Following the release of the discs and transcripts, a hearing was convened and, over the course of a full day, Dr Austen gave oral evidence which effectively took the court through the bespoke process she had adopted, highlighted aspects of the interview with X which she considered were important, and answered the questions which were put to her by all three counsel and by Y. I have a transcript of her evidence within the material in the court bundles. Thus, whilst Y did not take up the opportunity to cross-examine Dr Austen or to challenge her evidence during her second appearance before this court, he did have the opportunity to ask her questions and to put his case on 29 June last year.

#### *The Law*

21. The law which I must apply is not controversial. The local authority brings these proceedings and it bears the burden of proof in terms of the findings sought which underpin the current care plan. The standard of proof is the balance of probabilities: *Re B (Children)(Care Proceedings: Standard of Proof)(CAFCASS Intervening)* [2008] UKHL 35. Any findings of fact which I make must be based on the evidence which I have heard or read. I cannot, and

do not, speculate about matters which are not evidence-based: see *Re A (A child)(Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12. Insofar as I have a body of expert evidence within the material before the court, and have heard on two occasions from Dr Austen, I have reminded myself that this evidence must be considered within the context of all the other evidence in the case including the significant volume of material which Y has put before the court: see *A County Council v K, D and L* [2005] 1 FLR 851.

22. In this context, I must consider very carefully the nature and reliability of the evidence which is before the court in the context of Dr Austen's 'interview' of X. It is quite right to record that I had expressed reservations about the extent to which X's responses, and Dr Austen's interpretation of those responses, might properly stand as a form of direct oral testimony from her. If the State is to assume powers to intervene in the private family life of X and Y in terms of the way their collective Article 8 rights are exercised and enjoyed, there must be a proper evidential basis for doing so. If the local authority is right in its contention that interference with those rights is justified on the basis of child protection issues in a wider and ongoing context, the court can only proceed on the basis of facts which it finds to be established on the balance of probabilities. Once such a fact is proved, this court will treat that fact as established and future decisions concerning Z's care will be based on that, or those, findings. If the local authority fails to prove a fact on which it is relying, the court will disregard that allegation completely.
23. I shall return to Dr Austen's evidence in due course.
24. In the context of Y's absence from the final hearing, I have alerted him to the fact that the court may be asked to draw adverse inferences from his failure to submit to cross-examination. I have also given myself a specific direction that a witness may choose not to tell the truth for a number of reasons. These can include shame, misplaced loyalty, panic, fear for the repercussions and distress. The fact that a witness or party to proceedings has lied about some matters does not necessarily mean that he or she has lied about everything: see *R v Lucas* [1981] QB 720. In other words, a finding adverse to a party's credibility on one issue does not of itself condemn him on another. Following

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Y's decision (with his McKenzie Friend) to absent himself from the court building on day one of the hearing, I instructed my clerk to send him an email which invited his return to the proceedings. I stressed to him that, notwithstanding his conduct of this litigation and the disrespect which he had shown to me and the court process, I was prepared to listen to him in the context of the arrangements which I was being asked to consider for Z. The fact that he declined that invitation in typically strident terms satisfies me that there was no procedural or other defect in continuing without him.

25. Section 31(2) of the Children Act 1989 provides as follows:-

“31(2) A court may only make a care or supervision order if it is satisfied –

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to
  - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him; or
  - (ii) the child's being beyond parental control.

#### *Findings sought*

26. The threshold findings sought by the local authority in relation to the harm likely to have been suffered by Z as at 13 March 2017 are as follows:-

- (i) Y physically abused X causing injuries;
- (ii) Y sexually assaulted X;
- (iii) Y locked X both in and out of the family home;
- (iv) Y drank to excess;

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- (v) Z was present when Y harmed X;
  - (vi) Z was present when Y sexually assaulted X;
  - (vii) Y locked Z in the family home with X;
  - (viii) X is unable to care for Z without considerable support.
27. The detailed care plan prepared by the local authority covers all aspects of Z's health, educational, social and care needs. It was prepared very shortly before the final hearing and records that he is both happy and settled in the care of his mother and is making positive developmental progress in her care. It also records his stated wish to continue living with his mother and to have regular contact with his father. The plan envisages that X will need to be supported to meet all of Z's needs by the shared lives carers with whom she has made her home. The local authority has undertaken, as part of its plan, to finance that placement on an indefinite basis. The Home Office has now granted X indefinite leave to remain in the jurisdiction and thus her immigration status, an earlier concern in these proceedings, is now secure.
28. Y's plan for Z is that he should grow up with his family where he would be shielded from all the negative aspects of what he perceives to be further local authority involvement. He has put before the court a number of statistical arguments to show that children growing up in care generally have worse outcomes in their future lives than children brought up in a settled family home. In circumstances where X does not wish to share a home with him in future, he would wish to care for Z himself although he would want Z to see as much of his mother as possible under some (as yet undefined) co-parenting arrangement. Crucially, he wishes to end all future involvement of the local authority in Z's upbringing. He regards their actions to date as having unnecessarily fractured Z's home life just as he regards the local authority as having wrongly prevented X from exercising her rights to a private family life with him and their son. On several occasions in his communications with the court he has referred to her 'wrongful imprisonment'.
29. At a hearing on 29 June 2019, he explained his case to me in these terms:

“All I’m arguing is that there has to be a way for [Z] to be raised by both parents. Parents can work together. They don’t have to be at each other’s throats all the time. These proceedings have forced the parents to fight each other and I don’t want to fight my wife. I want her to have a happy life doing whatever she wants to do and I want [Z] to have a happy life being brought up by the mother he loves and the father he loves.”

“... put it to the test. Let X and I meet and you can put me in a straightjacket if you want to but let us meet. Let us just, “Hello. How are you ?” Let X meet her friends. Let everybody be friends again and 90 per cent of the problem has disappeared because I’m not going to try to take the child away from his mother. Right from the beginning of this case I’ve said exactly the same thing. I don’t want to take the child away from his mother.”

## **The Evidence**

30. At an earlier stage of these proceedings when the matter was before The Circuit Judge, the local authority sought permission to withdraw its application for public law orders. They did so because the only evidence which was then available was the ‘Widget’ statement which was obtained during X’s initial interview with the police on the day after her presentation at Z’s nursery school in March 2017. The court had subsequently given permission for the instruction of Dr C, a specialist clinical psychologist with an expertise in dealing with the deaf. He filed two reports in March and July 2018 which went to both X’s litigation capacity and her understanding and communication skills. He assessed her cognitive ability as lying within the first centile. In other words, 99% of people of her age would perform better cognitively. This placed her at that stage in the ‘mild mental retardation’ category of the ICD-10 although her memory for visuospatial stimuli was in the low average range. This, he concluded, was the result of severe language deprivation. He was of the opinion that all the aids to communication (including Makaton, drawing, BSL, Widgit symbols, objects of reference and role play) had the potential to enable effective communication with her provided that focus of that communication was about mutually familiar concepts. What he felt was lacking in X in this case was a sufficiently developed inner language, or sense of what language is for, to enable her to communicate about abstract possibilities or hypothesis in the future.

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31. Thus, whilst he felt that X might be able to understand a summary of the proceedings and the outcome of a particular court hearing if properly explained to her, he did not feel that she would be able to understand court proceedings as they unfolded before her to any useful extent. In this context, he was clear that she lacked *litigation* capacity and required separate representation through a litigation friend, which role the Official Solicitor has since assumed.
32. He recommended that X's linguistic skills might well improve with an intensive session of BSL sessions. Overall, in March 2018, he was recommending that, whilst she would require a considerable amount of ongoing support to parent Z, she should not be over-supported in ways that any other deaf parent would manage by themselves.
33. The addendum to his main report was produced by Dr C in July 2018. It addressed a number of written questions which had been put to him following receipt of his mainframe report. In terms of how X might be helped or facilitated to answer questions, he made the following key points. First, her capacity to respond depended on the questions which were asked of her. He was firmly of the view that giving evidence live in a court room setting would be "extremely problematic" unless the questions were "extremely concrete and accessibly presented". Secondly, he thought that some questions were best posed outside of court before any relevant hearing. His addendum report suggested a number of ways in which such a process might be achieved.
34. X appeared to respond very well to the professional support which was being made available to her in the early stages of her shared lives placement. This was probably the first time she had been in receipt of such professional input and support on a consistent basis. The court gave permission for the joint instruction of a renowned expert in this field to meet with X, review the position and provide a report. That expert was Dr Austen.

*The evidence of Dr Austen*

35. Her first report was dated 19 October 2018. She spent an entire day with X at her shared lives placement together with a BSL interpreter and X's social

worker. Dr Austen agreed that she did not have the capacity to conduct these proceedings without a litigation friend. Her professional view was expressed in these terms:

“In my clinical opinion [she] has a neurodevelopmental condition that presents as a mixed cognitive presentation (overall an intellectual disability and some islands of ability) including a language disorder that affects both semantics (content of language) and pragmatics (how she uses social communication).”

36. That diagnosis underpins Dr Austen’s conclusion that X should not appear in court to be questioned or give evidence. In terms of ICD/DSM terminology, Dr Austen placed X in the category of ‘intellectual impairment’ or ‘mild learning disability’. In order to enable progress to be made she proposed an alternative means of approaching matters. Whilst acknowledging that it was ‘legally unorthodox’, she had reached a professional conclusion that it was one which made ‘more clinical sense’ in terms of a bespoke approach to this particular individual.
37. In her addendum report dated 2 February 2019, Dr Austen addressed the responses she had received from other professionals in the case to her suggested way forward. This is what she said of X’s communication abilities:

“If she wants to express herself, she will often be innovative and persistent to find resources that help her get her message across. This might be objects (like her passport), pictures (from her BSL teaching book) or internet-based pictures and Apps (such as Google Maps).

Those who know her well tend to provide material that is a catalyst for her to describe events, rather than ask her direct questions. For example, when shown Google Maps she was able to describe her activities in her country of origin such as wood chopping and canoeing. When shown pictures of her mother and sister she was able to comment on how they had changed and to show consistent pleasure on her face and in her body language. Under such conditions, she expresses plausible chronology (such as the places she has lived, the year she moved, and retains a reliable order of events). Once in a flow of expression, more word/signs or pictures can be dropped in to steer her to give further detail.



.....

The professionals agree that [X] does not embellish information. [She] appears to have been consistent in the information she gives, both when she gives it more than once to the same person or once each to different people.

[She] has related similar information about her experience of domestic abuse to everyone who has worked with her regularly. Whilst I stand by my opinion that [she] could not [have] understood and cannot understand the Widgit statement during a police interview, the consistency with which she has told Dr C, [Z's social worker, her own social worker, the interpreter, the Guardian and the Shared Lives carer] of being hit or hurt by Y I believe has relevance. She has described these events in a similar way, on a sufficient number of times to a variety of people.

To each professional who has observed [X] saying that Y abused her, I asked whether [she] had also described happy times or loving experiences she had with him. Each said that [she] had told them of happiness associated with places but had not told them of a happy memory related to being with Y.”

38. When asked what safeguards should be put in place if the proposed interview with X should go ahead in the manner she had proposed, Dr Austen highlighted the fact that Y had been invited to participate in, and be part of, the planning process. It was felt that he had much to contribute given his knowledge of his wife's means of communication. He declined that invitation. Dr Austen commented that,

“Whilst I can understand Y being distressed by the events of the last 2 years, I think the content of his reports are so rambling and contradictory, and his failure to answer questions put to him so unproductive, that I cannot help but wonder whether his ability to represent himself in court should be assessed.”

39. The ‘interview’ process with X took place on 8 May 2019 and is described in Dr Austen’s report dated 19 May 2019. As I have said, she attended court on 29 June 2019 to give oral evidence about exactly what had transpired on that occasion.

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40. She explained to me that the process of eliciting a narrative from X was framed throughout by giving her a clear context for the questions which were put. She was with X for a total of some six hours, taking breaks during the day as they were required. She told me that she was very confident that she had been given clear information in relation to the questions she had asked. Present on that occasion were X's social worker, and an experienced BSL interpreter. Dr Austen was clear that she had only committed to her written report the information about which all three were absolutely confident as coming directly from X.
41. Dr Austen was asked about her description of the process being 'legally unorthodox'. She told me that the process itself, including contextualising her questions throughout for the individual she was seeking to engage, was a process which she frequently deployed in the course of her practice when she was gathering information from a patient who had limited communication skills. Dr Austen made frequent and regular use of tools during the time she spent with X, such as photographs and 3D figures such as teddies/dolls with photographs of faces of people known to X stuck on to them. She acknowledged that determining whether or not the answers were true was a matter for me and she appreciated that her function was to report to me as accurately as she could what X had intended to convey through her communication. I have watched the DVD recordings of what took place during that meeting on three separate occasions and what is clear to me is that much of the context of X's responses to Dr Austen comes from the body language she was displaying when signing her answers. I observed some clear and obvious demonstrations of body language, gesture and emotion which told me much about what X was experiencing as she responded to the different topics which were raised with her. Dr Austen's professional observations in this respect coincide with my own. She put it in this way:

“So, for example, any time that X is talking about [Z], there's a warmth and a humour. “Oh, he likes football”, and “boys will be boys” and, you know, that sort of body language where you can see a sort of – a happy warmth. There is another set of body language where X is commenting on Y where there is a lot of twisting to one side in a body language that is quite painful. There are a few bits coming forward in an aggressive form

but there is an angst that is very different to when she is describing [Z] and then there is a third set of body language that I think is important around her family where, shown the pictures, she is open, she is sitting forward, she is looking at them, making comments about them and then when I introduce the toy that I have used, the figure that is her mother, there is a genuine sadness and she takes the doll and holds it and cries and turns away in a sort of almost slightly ashamed to be crying way. She stays looking at her mother's picture. I felt that my job as an expert in sign language and clinical psychology was to facilitate a series of conversations or body languages in X that other people could understand."

"So what I am looking for as the scientist behind a clinical psychologist is validity and reliability. Validity means would you and I or X be talking about the same thing. Have we got a shared understanding, a shared context ? Reliability is if I think I've got it and I have got that shared validity ... On the topics that I have answered ... by coming back to questions, by comparing them to previous discussions, I was able to say on those, not all of them, but on the ones I managed .... I felt I had validity and reliability, that the bits I commented on we were definitely talking on the same topic and the answer that X was giving me was the same answer."

42. Set out in the body of Dr Austen's report dated May 2019 is a written record of key aspects of her interview with X. To the extent that this written record accords with what I saw and observed on the DVD discs, I accept it is an entirely accurate record. That, of course, is not the answer to the next question which is: was X giving a fundamentally *true* and *reliable* account of what had actually happened to her (i.e. what she had actually experienced and the identity of the person who caused those experiences) ?
43. When X was asked about where she was living and whether she would live with Y again, she was able to make it quite clear that she liked the home she was then living in and did not want to return to live with Y. In the context of her latter response, she used a means to communicate directly with Dr Austen by ensuring she had eye to eye contact before signing, "*Hold on. Him, definitely not.*" She continued,

*"Going forward. X in Y's house, I don't know. That house, it's not safe, fingers crossed, getting angry, my leg, give up, red, I'm looking, I don't know, on the floor pushing, drinking, going back, [Z], fighting, frustrated,*

*I am frightened, and him drinking, him looking at screen, he smells, cuddling, I don't want him cuddling, shouting."*

44. She was able to communicate to Dr Austen that, during the course of these proceedings, she had received an unsolicited card from Y on Valentine's Day in which he had written 'I love you' and it had made her scared. She had shown that card to her social worker when she received it and gestured ripping it up and throwing it in the bin.
45. She was able confidently to convey to Dr Austen that she wished to stay living where she was and described in positive terms Z's school, games and the social life they enjoyed living in that placement. She was able to articulate through sign language that she was aware that Z was visiting his father on Wednesdays and Saturdays.
46. In relation to the alleged physical and sexual assaults upon her by Y, she pointed to a photograph of Y and signed the following (as recorded in Dr Austen's report):

*"Held me by throat, hurt, my leg, twisting, snapping, my body, my hands shaking, held me by the throat, he did".*

47. As I observed the DVD whilst this was being signed to Dr Austen, X appeared to be demonstrating Y having twisted her legs and knees in order to force her legs apart in order to facilitate sexual intercourse which she did not want. When she is shown a piece of paper with a cartoon silhouette of a man hitting a woman and another of a woman hitting a man, X chooses on two separate occasions the man hitting the woman and ensures that she makes direct eye contact with Dr Austen when she does so. Her posture changes at this point and she twists her body into her chair as she signs, 'Hit my side, head, shock, look behind, hit my face.'
48. There is in the material before the court a photograph of the bedroom which X and Y and Z occupied in the accommodation in which they were living in March 2017. This shows a double bunk bed with a single bunk bed above it. The room is comparatively small and appears cramped. Y told me during a previous hearing that, whilst living in the 'barn'(as he described this

accommodation), he and X slept in the double bunk and Z slept above them. He also told me that the friend who had made the accommodation available to them lived in a separate house at the same property. That friend, he said, allowed them to use the main house from time to time and, when they wished for some private space in order to be intimate, they would use the bedroom in the main house.

49. When Dr Austen showed X a photograph of the smaller bedroom in the barn accommodation, she signed, *“Hurt my back, telling someone to move, frustrated, drinking, drink by side of bed, drink, kick or grab, moving things, bigger and smaller. They say come here, move, hug, thinking, up behind me. Roy come around, what could I do, no, spring, hurt in the bed, 3 or 4, cold. I would be on the floor”*.
50. At a later point she signed the following:

*“... pull my legs apart, twist my arm, he very big, lie on top of me, pin me down, no .. no sex ... hurts.”*

She appeared to be indicating that he had hurt her vagina (*“yes, and sticky, sticky my whole body. Hands hurt and shaky, my leg and hip hurt, leg, he twisted my hip, leg and knee. I said ‘get away’ upset, had to.”*)

A few minutes later, she appeared to be signing the following words:

*“Hit. I hate it. I pray. I worry. Worry, shout, hope not, grab. Sex, sex, hurting, red, sex. Drinking, baby, sex, I say no, upset, crying, no, no sex. Hurt my knee push him off.”*

51. There is more in a similar vein. X appeared to be signing a descriptive account of Y having been less than sympathetic when she suffered four previous miscarriages. Dr Austen describes her expression and body language during this exchange as “sad, thoughtful and pained”. I can see for myself from the video recording that this description is accurate.
52. I direct myself, as I must, that I should exercise care before placing undue weight or reliance on information extracted from Dr Austen’s interview

process. It was bespoke but unconventional in a number of respects and involved on occasion leading questions and the provision of visual images to prompt responses. Dr Austen has explained that it has been very important to contextualise any communication with X if any reliance, is to be placed on her responses. She told me during her oral evidence on 29 June 2019 that she, Dr Austen, was “very sure” that she had properly interpreted X’s responses to questions about being sexually abused by Y. She was less sure that she was being told that Z was present in the bunk above the double bed whilst this was happening. She was confident that she was being told that Z was present somewhere in close proximity to these events but she could not discern from X’s account how close he was.

53. During part of her interview with X it had appeared that Dr Austen might have been told about a situation, or series of situations, where Y had been present when X was engaged in sexual activity with other men. Dr Austen reported her account of what appeared to be money changing hands and Y being present and this possibly being something which happened in X’s country of origin. She herself was much less sure that she had correctly understood what she was being told and, since this does not form part of the fact-finding exercise which I am undertaking, I place no weight or reliance on this particular exchange in the overall context of the allegations of non-consensual sexual relations with her husband.
54. Dr Austen’s professional opinion is that X lacks the capacity or ability to deliberately manufacture a misleading account of events of which she has direct experience. She told me, “*I do not think [X] has the cognitive and linguistic ability to weigh up information and lie or weigh up information and choose the craftier answer.*” Y suggested to Dr Austen when he was asking her questions on 19 June 2019 that his wife had far greater cognitive abilities than she had been prepared to acknowledge. He put two particular examples to her by way of illustration. The first was an occasion whilst they were living abroad on their yacht talking to another yacht owner. He had shown them an advertisement or picture in a magazine relating to a repair yard which he wished to visit. X had signed to indicate that she knew where this yard was.

She was apparently able to direct them as they travelled by car to the yard some five miles outside the nearest town. He told me that she had only been on this road once before, some six months before. Dr Austen acknowledged that X had better visual and memory skills than language skills. She thought the episode described by Y was entirely possible. Significantly, she acknowledged that we were likely to find other “islands of ability” as her cognitive function improved with professional support. In similar vein, she accepted that another of Y’s examples might well have been within X’s competence and ability. He had described how she had assisted him to develop a vacuum process to remove water from the hulls of fibreglass boats. This she had achieved by drawing on a piece of paper the need to ensure that the air which went back into the hulls was dried and all moisture extracted before it was pumped back into the hulls. He stressed to me during the June 2019 hearing that this was an important example of her ability to think and weigh matters because he continues to maintain that he has not assaulted her physically or sexually and thus the only explanation for the narrative which she has delivered to Dr Austen through her use of sign language is some form of calculated misrepresentation of the truth. Indeed, he went so far as to tell me that she has “a very high level of competence” and “a decision-making brain, a weighing-up brain, a calculating brain”. He gave as a further example a situation where X had communicated to him her intention to drive a hire car which they had parked at a boatyard whilst abroad. He had told her this was not possible because of the volume of people and traffic at the boatyard. He subsequently discovered that she had taken the car and driven it to a nearby shower block before returning the vehicle to the place where it had been parked. He used this as a further example of her ability to make up her own mind when she wanted to *“and she has the ability to disobey”*.

55. Dr Austen acknowledged that X may have “islands of ability” around practical situations which she experiences at first hand. These instances recounted by Y were, in her view, entirely feasible. However she was clear in that what X lacked fundamentally was the skill to use language at a deeper cognitive level. Dr Austen was categorical in her view that, drawing on her 28 years of professional experience, she had been left in no doubt that X had a very



significant learning disability and cognitive impairment. She remained confident that X did not have the cognitive or linguistic capacity to deliberately formulate a lie.

56. In order properly to consider what weight I can attach to Dr Austen's interview, I have to look at what other evidence is available to the court about these matters. In the context of the evidence as a whole, I also have to consider how far X's understanding and ability to communicate has evolved in the three years since March 2017 when she first presented at Z's nursery in apparent distress. Y denies each and every one of the allegations against him. It is his case that any physical aggression during the marriage was directed towards him by X. Whilst he has not given me any sworn evidence from the witness box, he described to Dr Austen during the hearing in June 2019 an occasion when the parties were living in one country but spending some time in another country. He maintains that he came back to their hotel room to find X engaged in sexual activity with another woman. He says that she attacked him on this occasion and caused him to pass out by striking the back of his neck. He accepts that there were tensions and strains in their relationship in the months leading up to their separation but he maintains this was due in part to financial worries about the business he was trying to establish for their mutual benefit and his increasing inability to satisfy her sexual needs.
57. He has urged me to be very cautious about placing any weight on Dr Austen's evidence because he suspects that the interview process itself revived in X's own mind some difficult memories from what he described as her "horrific background". He asked me then to consider whether conversations about sexual assaults, money and "Y" were creating in her mind a highly distorted internal narrative which places him at the centre of a train of events which are not the reality of her recently lived experience. As I have said, since he elected to take no part in the final hearing, he was not available to hear all the evidence and make his submissions upon it.
58. In his cross-examination of Dr Austen on 29 June 2019, Mr Cornford on behalf of the Guardian asked whether there might be any substance in Y's suggestion of traumatic memory recall. Dr Austen was clear that her



impression had been, and remained, that X was welcoming the opportunity to talk about some very difficult areas of her experience with Y. She did not depart from her clear evidence that she was “very sure” that, in relation to the specific allegations of physical and sexual assault, she was being told by X about what she had experienced in an episode or episodes of physical and/or sexual assault involving Y.

59. In terms of their respective statures and build, there is no doubt that Y is very significantly taller and heavier than X who is very slight by comparison. I do not doubt that, had he wished to, he could very easily have forced himself upon her. But that, by itself, is but one aspect of all the circumstances which I have to review in terms of the totality of the evidence.
60. In relation to alcohol and Y’s drinking, this has been a consistent theme of X’s complaints. X’s social worker showed me during the course of her oral evidence how X would demonstrate on a number of occasions how her husband had consumed an excessive amount of alcohol. There is undisputed evidence that when the local authority’s social worker visited the home shortly after X left in March 2017, there was a whiskey bottle by the bed and a glass of whiskey next to it. The Social Worker’s report refers to “a potty on the floor with what looked like stale dried urine in it’. She made similar allegations to a number of different people, including the nursery worker, who observed her in a state of physical distress on the morning of 13 March 2017. Similar accounts of his drinking were given to others.
61. An independent social worker prepared an initial parenting assessment of Yin August 2017. She met with Y and observed a session of contact between father and son. She described Y as “controlling” and reported that “at times he has tried to control the process of the assessment”. Whilst he co-operated in that initial assessment, he has since refused to engage at all in any further assessments notwithstanding my repeated requests of him and specific directions that he should do so. He has declined those requests and ignored the court’s orders knowing that the court may draw adverse inferences from his failure to do so. The independent social worker’s view was that he found it difficult to express his emotions and adopted a very business-like approach in

his attempts to set the agenda of their discussions. At that stage, the independent social worker was not recommending Y as a potential full-time carer for Z. In terms of his drinking, her report referred to these concerns in specific terms. It confirmed that tests which he had undergone had established that he had indeed consumed excessive alcohol between January and April 2017. Y had himself confirmed during that assessment that he was drinking more at the time when his relationship with X was deteriorating. Z's social worker has also reported concerns about Y's excessive use of alcohol. Y has since refused to undergo hair strand testing for these purposes. When concerns were expressed about his driving Z to and from the contact centre, he did agree to take breathalyser tests on each point of collection and delivery.

62. The hair strand and blood tests undertaken by Cellmark in April 2017 indicate "possible 'chronic excessive' use of alcohol by [Y] between approximately early January 2017 and early April 2017". It also records the possibility that he may have ceased drinking in recent months since the results of the hair analysis for ethyl glucuronide (EtG) falls below the Cellmark reporting 'cut-off'. An alternative explanation offered in the report is a change in hygiene and/or treatment procedures and/or natural inter-individual variation in incorporation rates of EtG.
63. Given the length of time during which these proceedings have been ongoing, Z's Guardian has had the opportunity to build up a relationship with X. With the assistance of an experienced BSL interpreter, she has seen X on a number of occasions. The report which she prepared for the purposes of this final hearing is quite clear in terms of the narrative she has been given by Z's mother. During a meeting in November 2019, some weeks before the final hearing, she records the following:
- “26. X told me that she speaks to her mother and sister via the computer. She said that [Z] participates in these conversations. X spoke of talking to other family members and that they loved each other very much.
27. X told me her mother would like her to live in [her country of origin] but whilst X said she would like to visit she was very clear that she wished to return and live in the UK.

28. I asked X if her mother had seen Y recently. She told me her mother sometimes speaks to Y. She explained that whilst on the computer to her family, “Y was there, around the table with them, I was scared. I didn’t say anything, I kept my head down, I didn’t want to look, I kept my mouth closed. They were all eating meat and fish and food. I saw him, I didn’t look at him. My mum was there, my sister was there, the taxi driver was there, he spoke to me, he called me beautiful. I was getting upset and stressed, I was shaking, it was like I was being ordered to do something and I was shaking”.
29. X then repeated the incidents that allegedly occurred, when she lived with Y. “[Y] grabbed my arm and twisted it, there were three in a bed, he was sleeping there and would hit me in the side, he was asking for sex, he would go off and then [Z] would be crying, and I had to calm him down, so I was really scared. He was drinking and driving. I was asleep, and I would be made to do it. He would be angry, there would be lots of people there drinking and I would be frightened. He would say I’m hungry cook for me [X], so I would give him food and watch the TV.”
64. The Guardian is in no doubt at all that X is frightened of Y and wishes to have no communication with him at all.
65. There are several strands to be teased out of the Guardian’s evidence as I have set it out above. I propose to deal with Y’s recent and unannounced trip to see X’s family in a different context of my judgment. For present purposes and the specific allegations of the alleged physical and sexual abuse and his excessive consumption of alcohol, two aspects are clear. First, I accept that X appears to be frightened of Y and to regard him as someone who is in a position to exert power and influence over her. Whilst I cannot extract from her narrative a coherent account of what may or may not have happened on an occasion or occasions when other third parties were present, I am satisfied that she has described an occasion or occasions when he has made sexual demands of her in circumstances where she has been an unwilling partner. I am further satisfied that he has displayed anger towards her and that his actions are likely to have been influenced in part by excessive consumption of alcohol on these occasions.
66. I remind myself that the Guardian’s account concerns a conversation or dialogue which she had with X on 18 November 2019. This took place several months after the video interview which Dr Austen conducted in May

that same year. All the evidence before the court points to a considerable improvement in X's abilities to communicate over that period.

67. I found the evidence of X's social worker to be of particular assistance to me in this context. The picture of the woman who emerged from the social worker's description of X in the witness box revealed a very different person from the 'locked in' individual who emerged from earlier reports.
68. X's social worker has been consistently involved in the local authority's planning for X and Z's future over the course of the last eighteen months. She told me that she had visited her in her shared lives home on more than thirty occasions. She knows her well and X appears to repose significant confidence in her social worker.
69. X's social worker described to me the very significant progress which X has made in terms of her ability to communicate clearly and lead a more or less independent life within the supported parameters which had been put in place for her and Z. She told me about what she referred to as "a significant communication deficit" when she had first met X who was unable to communicate in any intelligible way. The interpreter had put together a book with symbols which X recognised and used. In addition, she was using a tablet which expanded her range of symbols. By this time X was able to describe the routine of Z's day and an insight into her own daily life. What emerged from this evidence was a picture of a warm and socially open woman who took care of most of the aspects of Z's school life, who travelled quite freely on buses to get around her local neighbourhood, who travelled unaccompanied to the shops, and who is able to use her computer and access the internet through sites such as Google and Google Maps. She has developed a system of retaining her bus tickets so that when she gets on a bus, she can show the driver where she wishes to travel. She is able to communicate through her mobile telephone to stay in touch with her shared placement carer when she is away from her home. She is able to text the name of the street where she is with a request to be picked up and taken home. All the evidence before the court points to her being able to come and go quite freely and as she pleases. She has a knowledge of the local geography around

her and, for example, likes to visit a particular local town close to her home. On days when she visits this town, she is perfectly capable of making her arrangements and letting her carers know where she will be.

70. Key to the social worker's communication with X now is her ability to know when X has or has not understood something. X's social worker told me that there has been a significant and rapid incline in X's ability to communicate. She is learning to sign more consistently. She has overseen the care of X as she has moved between three shared lives placements since 2017 and she told me that this improvement has come as a result of the sustained input which has been made in terms not only of the BSL lessons outside her home settings but also (now) with a shared lives carer who can sign with her within the confines of the home they share with Z. As a result, X has been motivated to learn and her communication skills have improved rapidly as she has seen her internal world unlocked.
71. X's social worker gave me a striking vignette of how X's communication has improved. At Christmas (2019) she offered her social worker some fresh ginger which she had bought in the market. She pointed indicating that her social worker was to take it as it would assist her to stay slim. Because this was something within her own practical experience, she was able to communicate it as a narrative to others. This, the social worker told me, is key to her ability to communicate. When she has a particular knowledge or experience of something, she can now relate that experience to others through her use of sign language. What she is not able to do is to conceptualise circumstances and events outside of the context of a real lived experience. Thus, the realities of her daily life with Z, her past experience of life with Y for some years on the boats, her day to day existence now, as well as her memories of her family in her country of origin, are all well within her competence to describe and she has spoken often to others about her experiences. What she finds difficult is hypothesis and looking forward into potential situations which she can neither envisage nor understand. Thus, looking at Google maps of her country of origin and photographs of places she

has visited, she was able to show her social worker how she was breathless going up the many steps to reach the top.

72. Whenever her social worker has raised with X the subject of her former relationship with Y, she has remained conscious of the need not to ask her leading questions. She told me that she is quite clear that X wishes to tell her story and will actively seek to engage eye contact in order to make a point through her use of signing. She demonstrated to me from the witness box how X has signed clearly to indicate Y's excessive use of alcohol and how she would wave her flattened palm laterally over her mouth to indicate how he smelt of alcohol after drinking. She would circle both fingers around the sides of her head to indicate he would appear "crazy" after these episodes of drinking and recounted an occasion or occasions when he tripped over a door or clothes left on the floor before falling onto the floor.
73. Her social worker is quite sure that X has been clear in her communication that she does not wish to see or meet with Y. Whenever this issue is raised, X will sign the story of what has happened to her and the abuse which says she has suffered. These communications are almost always followed by a sign to "please keep me safe".
74. I heard from Z's social worker who has been involved in this case for over two and a half years, that she had introduced the topic of X's wishes and feelings about her marriage by showing her a photograph of Y. At the outset, Y had pointed to Z's social worker's wedding ring and then pulled off her own wedding ring which she has not worn since. She had also raised her hand to her mouth to demonstrate someone drinking before hitting herself on her upper torso and leg with her fists. This all came in the context of being shown a photograph of Y. She repeated these demonstrations to Z's social worker on four subsequent visits. The social worker is quite clear through the course of her relationship with X that she has not wished to return to live with her husband although she has cared consistently for Z through several placement moves.

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75. X's social worker was asked about Dr Austen's evidence that X was unlikely to understand, or be able to communicate, the concept of a lie or deliberately fabricate an untruth about an experience. X's social worker agreed that for X this would be a complex concept because it would involve an understanding of the impact of her language on others and this is not yet part of her communication skills or language. She is easily able to communicate her own feelings in the context of past events such as worry, fright or feeling sad. However, X's social worker's evidence was that whilst she could not categorically say that X was incapable of lying, she believes a deliberate manipulation of the truth would be very difficult for her. What she is clear about is what she wants for herself and Z in terms of their own lives. She wants to live where she is, for her son to continue with his schooling here and to visit her family, but on the basis she will return to a home in England.
76. As to what X understands about the current legal proceedings, her social worker told me that she is aware that there are people who are asking her a lot of questions and who are looking after her by putting in place the various resources which are being made available to help her with her communication. The fact that she has been observed using a Google search tool suggests to her social worker that she has an internal intelligent interest in knowing more but still has little understanding of concepts outside her reach. Despite having both a tablet and a mobile telephone at her disposal, she has not once sought to make any contact with Y . She knows how to spell the name of the village where they lived together and has not taken any steps to reach him by this means.
77. Her ability to manage Z on a daily basis has improved significantly in recent weeks and months. In terms of setting boundaries, after a recent tantrum, she was able to impose a computer games ban during weekdays of her own initiative.
78. As I have said, the progress which this young mother has made over the course of several months is very obvious and enormously pleasing. Dr Austen was recalled during the final hearing. In order to address the issues raised in the context of X's recent progress, she had been shown a transcript of the



evidence which I heard the previous day from X's social worker. Dr Austen told me that she was not entirely surprised to see the significant improvement in her communication abilities. She had anticipated that her skills might evolve over time with the right professional input and support. She saw that improvement as likely to have occurred in both her communication skills and probably in her IQ score. She was clear that both X and Z would need ongoing support both from the Deaf CAMHS team and those supporting the BSL lessons. Dr Austen saw her own role with the family as an evolving one. She agreed with X's social worker that X's internal comprehension was now much better when it was linked, or referenced, to her actual experience.

79. Mr Green on behalf of the local authority asked Dr Austen in cross-examination about some messages written on notes which X had produced some twenty-four hours earlier. These had been photographed as screen shots on a mobile phone after they were written in circumstances where X had been asked whether she wished to meet with family friends. These notes bear her handwriting. She has written, "[T] ... no no no" and on a second note "no see you [Y] ? no [T]". On her third note she has written, "no see you [Y T] ... want don't [crossed out] don't sex tody you no [R] thank".
80. Pausing there, it seems that the reference to 'R' is a reference to a lady who was teaching X BSL sign language during their time living on the boats abroad. Y has produced during the course of these proceedings a letter from R written in 2015 in support of his immigration application for X to reside with him in England. This lady was at the time a primary teacher who was sailing around the world with her partner. She has spoken positively about the family life which X and Y appeared to be living at the time with Z as a small baby. I quote from a passage in her letter:

"For five weeks in the marina we met 6 days a week to work on Literacy and Sign Language. [X] became hugely motivated and worked with an intensity that was very gratifying and has made excellent progress. The supportive staff and friends at the Yacht Club have been keen to help; translating the English communication book we made for her for use in the local community and learning greeting signs and responses in BSL to enhance their interaction with her. ...."



“In all this time Y has been very supportive of [X]. He has willingly taken over child minding duties each morning basis with a very active two year old to allow [her] uninterrupted learning time. [Her] own progress, assisted by an almost photographic like memory, sharp intellect and joy at embarking on the education denied her by her poverty, and deprivation as a child has been amazing. Her resilience despite such incredible hardship in her early life, or perhaps because of it, is quite extraordinary and she has from the very beginning of our relationship made the most out of every opportunity. He is an absolute delight to teach.

We have learned together, linking pictures to signs, to finger spelling and to word recognition. [She] has astounded me many times with her retentive memory for signs we have touched on possibly only once. She has mastered a number of words and phrases and she texts on her phone now and my husband is guiding both Y and [X] through a GPS based phone app that gives them both the ability to find each other if separated....”

“As I have worked with [X], her ability to express deeper emotions has been much enhanced, so that her fright over [Z] falling into deep water and her diving in to rescue him, was still palpable the next day as she related the incident to me. Her anger at her Mother and Uncle for demanding money from them was also clearly expressed and on a more disturbing note her sadness for her sister and baby who disappeared without trace while she and Y were living there, and who [she] believes has been murdered, underlines the uncertain future that life in [her country of origin] would hold for her, Y and [Z].”

81. It is clear from the record of the detailed daily logs maintained by X and Z’s foster carers (occupying two separate lever arch files in the material before the court) that she continued a Whatsapp communication with R through the early days of her separation from Y. For example, there are references on 20 and 26 April and 8 May 2017 to her having exchanged messages and photographs with R.
82. It is difficult to reconcile the account given above from someone who was/is essentially a lay person (albeit with teaching skills and qualifications) with the expert reports provided by Drs Austen and Cornes in the present litigation. What I can properly collect from the totality of the evidence which is available, including the most recent reports, is that X’s ability to communicate is clearly improving rapidly as time passes and resources are put in to support her.

83. Dr Austen's evidence at the final hearing went to both those matters covered in her earlier interview with X and her direct evidence to me of the likely improvement in her communication skills. Dr Austen clearly took pleasure in the progress which had been made when she was shown the notes which X had recently written in relation to the family friends. She remained of the view that X did not have full litigation capacity and would continue to need support with her parenting through the resources which were being provided but Dr Austen remained clear about the answers and responses she had received from X during her interview process. She was asked about the near contemporaneous 'Widget' statement which X had given to the police in the immediate aftermath of the events in March 2017. Dr Austen was initially highly sceptical about the reliance (if any) which could be placed on that statement. However, during her evidence at the final hearing she told me that this piece of evidence should not be discounted altogether as part of the broader emerging picture as it has evolved through the similar accounts which X has now given to many others. She told me that there were similarities in the manner and methodology in which the information had been communicated by X on both occasions. Just as she had tailored the bespoke process of her own interview in a 'gestural, role-modelled' way to elicit spontaneous responses from X, so too had the police attempted to record through their process the information which they believed she was attempting to communicate. In Dr Austen's view the fact that X had made many similar reports to others gave an important consistency to her narrative.
84. Dr Austen remained clear in her evidence that X did not possess the necessary 'theory of mind' to present a deliberately inaccurate account of what had happened to her. She told me that it was outwith her comprehension that a judge, or some other third party, might be asked to consider which of two accounts might be true in the context of the denials which continue to be asserted by Y.
85. Her visual and signed 'accounts' and narratives to several professionals in relation to the alleged physical and sexual assault by Y have been consistent and compelling. In their simplicity, they lack guile and nuance. They have

been delivered consistently to the third parties who have heard and observed them with a clarity of emotion which I do not believe would have been possible to dissemble or feign had that not been an emotion which X actually experienced at the time. I was impressed by the evidence I heard from both Z's social worker and the Guardian about one of the early court hearing in these proceedings. It was the one and only time about which I am aware when X has been confronted with the physical presence in the same location of Y and his McKenzie friend.

86. She told me that when Y had approached his wife in the communal court space and started to talk about their relationship, X had stiffened and started shaking her head.
87. Z's social worker went on to describe the incident which took place in one of the consulting rooms at Court. Family friends had attended court with Y on that occasion. X was sitting in a consulting room with Z's social worker and Z's Guardian. The social worker left the room to make a telephone call and, upon returning, found the family friends in the same consulting room sitting round the table with X and another social worker. .
88. She observed the family friend stroking X's hair and her hand. She said she could tell from her body language that X was clearly uncomfortable. His actions were making the social worker uncomfortable as she felt they were inappropriate. Notwithstanding the fact that X appeared to be recoiling by pressing herself back into her seat, the family friend continued to lean forward and stroke her hands and hair. He was showing her photographs of several people who were unknown to the social worker. When he showed her a photograph which included Y, X let out a scream and flung herself back into her seat. The social worker described her as "hysterical" and asked the family friends to leave the room. She said that sound was "absolutely horrendous". Her professional view was that X was absolutely terrified. She described the sound as "almost animal like" and described X as "physically shaking with emotion".

89. The Guardian described her recollection of those same events from the witness box. She told me that whilst X had appeared happy to see the female friend and greeted her with affection, the photograph of Y in the last picture outside the food business he was setting up provoked a “gut-wrenching wail” from X. She had cowered into herself and was visibly distressed and shaking. It was at that point that the Guardian brought the meeting to an end and asked the family friends to leave. The male friend had wanted to embrace X but the Guardian had prevented this by physically placing herself between X and him. She told me that X was quite clear that she did not want his physical embraces or any support from him and was in fact recoiling in her body language. The female friend was alive to X’s body language and immediately left the room. The male friend was reluctant to leave and had to firmly “shepherded” out of the room. X was apparently left in a state of such distress that she had to be reminded to take deep breaths to calm herself.
90. The Guardian agreed that the male friend’s physical contact with X during that meeting was ‘plainly inappropriate’. She told me that it could not be construed as a comforting gesture but was more in the nature of a ‘caress’ in terms of the way in which he had been stroking her hair. She regarded that gesture as non-platonic and she told me that it had made her extremely uncomfortable to witness his behaviour.
91. It is important to stress at this stage that no allegations have been made against the male friend in the context of this fact-finding exercise. His role thus far has been to support Y throughout the litigation. His written communications with the court have made it plain that he supports Y in the case he runs in relation to collusion amongst local authority employees and the abuse of process which both he and Y allege to have been undertaken by the court. He has sent to the court a written statement dated 5 August 2018 in which he denies stroking X’s hair. Of the extreme reaction about which I was told by both Z’s social worker and the Guardian, the male friend acknowledged that she was upset and started to sob when shown the photograph of Y but he maintains that it was seeing her husband with other women which upset her. He said this in his written statement:

“I have seen [X’s] jealousy when he talks to other women when we have been out together, she gets really upset...seeing him with two in the photo I hate to think what she was thinking. Has he moved on ? he has not seen me for so long has he forgotten me ? Who knows ?”

92. On previous occasions, Y himself has sought to explain X’s behaviour and reactions on this occasion to seeing him in a photograph as a reaction driven by jealousy since there were two females standing next to him. Each of the Guardian and the social worker believed the others in the photographs to be males.
93. I cannot know the truth or otherwise of who else was depicted in the photograph but I do not believe that the apparently visceral reaction which came from X, as observed and heard by these two professional women, was anything other than an uncontaminated response of fear. It was, as I find, not feigned nor manufactured. Notwithstanding that I did not hear any oral evidence from either Y or the male friend, I am unable to accept their collective explanation for X’s distress on this occasion.
94. In this context, I remind myself that evidence can never be weighed, evaluated and assessed in separate compartments. This is an exceptionally challenging case because of the difficulties with which X presents. I must have regard to the relevance of each piece of evidence and then stand back to exercise an holistic overview of the totality in order to reach a conclusion as to whether the case advanced by the local authority has been made out on the balance of probabilities: see *Re T* [2004] EWCA Civ 558, [2004] 2 FLR 838.

## **My Conclusions**

### *Capacity and the process adopted by Dr Austen for communicating with X*

95. I am in no doubt whatsoever that, despite the considerable improvements which X has made in terms of her communication skills, she remains a protected party for the purpose of these proceedings and she has not acquired litigation capacity during the currency of these proceedings.

96. In terms of Dr Austen's evidence, and in the circumstances of X's vulnerability as a potential witness, FPR 2010 r. 3A.6 requires the court to consider whether it is necessary to make one or more participation directions to assist a protected party either to participate in the proceedings or to give evidence. The purpose of that rule is to maximise the potential reliability of any evidence a party is capable of giving whilst providing adequate protection for that party's particular vulnerabilities. Having carefully considered the expert evidence of both Drs C and Austen, I was persuaded, and remain persuaded, that she could not have given any reliable evidence were she simply to have been called to the witness box in the usual way. It was for this reason that, with the consent of all parties including Y, I sanctioned the bespoke interview process which was carried out by a highly experienced professional whose qualifications and particular experience of working in this field over nearly thirty years made her uniquely placed to undertake the task.
97. In terms of the reliability of the account she was able to give through that process, I bear in mind a number of factors. The first is that I am fully aware that Y did not, and does not, repose any confidence in the court to deal fairly and justly with the allegations which are made against him by X. When I refused his recusal application, he made it plain he was not going to take any further part in these proceedings. It was a great shame that he chose to absent himself because he has not heard at first hand much of the evidence which I have recorded in my judgment. His principal quarrel is with Dr Austen and her conclusions but I remind myself that his absence from the final hearing did not deprive him of his opportunity to test that evidence in cross-examination. He had that opportunity during her first appearance in June 2019 and he took full advantage on that occasion of asking her a great many questions for much of that two day hearing. The verbatim record of that cross-examination is reflected in the written transcript which is within the material before the court.
98. I also bear in mind that I have not heard from Y himself who refused to go into the witness box to answer the allegations on oath. In normal circumstances, that failure might enable a court to draw an inference that the allegations are likely to be true: see *Re O (Care Proceedings: Evidence)*

[2003] EWHC 2011 (Fam). I do not draw that inference as a direct consequence of his failure to give evidence. Rather, it is but another piece of the wide canvas of factors and evidence from which I must stand back in my global survey of all the material I have available and from which I must make my decisions. His failure to give evidence is certainly consistent with his general attitude to this litigation and his refusal to engage in a number of its aspects. Following the two day hearing in June 2019, I directed that there should be a further parenting assessment of Y by an independent social worker. He was to be fully involved in the choice of expert and I further directed that he would be excused from any obligation to contribute to the costs of that report. I stressed to him at the time that it was essential that he cooperated with that assessment if I was to take any further his wish to care for Z at the conclusion of these proceedings.

99. In similar vein, he has refused to cooperate in the hair strand and blood testing for alcohol which has been ordered on two separate occasions in November 2018 and in June 2019. When he indicated a preference to submit to the court the results of monthly alcohol tests which his general practitioner would carry out, I afforded him this option. He has never filed any such reports. He has refused to seek legal advice and support preferring throughout to conduct his own case in a manner which, as I have said, has made this a much more challenging piece of litigation for all the professionals involved. He has made various threats against the social workers involved in the case and the local authority more generally. It is only right that I record in my judgment their professional responses to much of the material which he has circulated during the currency of these proceedings.
100. Y has been insistent throughout that his ‘Human Rights’ have been compromised by the course which this litigation has taken. He sees the ‘removal’ of X and Z from the family home by the local authority as a fundamental violation of his, and their, Article 8 rights. He sees this final hearing and the fact-finding enquiry on which I am embarked as a breach of his Article 6 rights. As I have already noted in this judgment, I have given Y throughout every possible opportunity to participate in the process of



determining his son's future and the optimum arrangements for his care and upbringing. He has refused to answer any questions in cross-examination and there is no statement of truth on any of the material with which he has deluged the court and the parties. His approach to the various outcomes for Z has been inconsistent and, most recently, entirely at odds with his initial presentation. I shall need to come on to consider his position in terms of the welfare aspects of this case at a later stage. Nevertheless, I am charged with ensuring a just and fair hearing of all these matters not only for Y but also for X and Z. In this context, Y's abject refusal to assist this court by subjecting himself to questions from their representatives and the local authority can only be seen as an attempt on his part to distance himself as far as possible from any adverse findings and to obscure so far as possible the forensic transparency of the fact-finding process.

101. One of the findings sought by the local authority is that X lacks the sophistication of internal language and functional language skill. As a result, she is said to be incapable of lying. That finding finds its reflection in the clear evidence I heard from Dr Austen. In this context I have to bear in mind the very significant progress which X has made in terms of her BSL signing abilities and communication skills. Nevertheless, it remains the clear view of both X's social worker and Dr Austen that the process of manipulating an account of specific events and experiences so as to present a misleading narrative remains outside her cognitive functioning and use of language. To the extent that it is necessary, I have been guided by Dr Austen's expert opinion since she has a wealth of professional experience which I do not. That said, I have reached my own conclusions as to where the truth is likely to lie by an holistic examination of *all* the evidence which is available to me. What I can be clear about is that, whatever improvement there may have been in X's ability to communicate, her descriptive accounts communicated in the only means she knows, have been consistent and given to many of those involved in one way or another in this litigation. That, in my judgment, is an important factor which I have to bear well in mind. Those accounts originated from her first presentation at Z's nursery school in March 2017 and they have not changed in their various iterations since.



102. Bearing these factors in mind, I turn now to the specific findings of fact sought by the local authority, and I draw the strands of evidence together in this way.

**(i) Y physically abused X causing injuries; (ii) Y sexually assaulted X; and (iv) Y drank to excess**

103. I remind myself again that this litigation commenced because of the manner in which X presented when she arrived to collect Z from nursery school on 13 March 2017. The nursery worker made a contemporaneous written account of events and came to court to give evidence at the final hearing. This is a first-hand account from a witness who observed X and who had no reason to fabricate or exaggerate what she saw. There were no visible cuts or bruises observed on that occasion but the graphic description and vivid demonstration she gave me leaves me in no reasonable doubt that this lady was in pain and exhibiting distress. I accept that the nursery worker observed a woman who was “hobbling along ... looking really uncomfortable ... and struggling”. Further, the demonstration which X herself gave to the nursery worker in her attempt to communicate what had happened to her in terms of having been hit, having her clothes pulled and Y’s drinking in that context appears to be an uncontaminated account of what the nursery worker actually saw. Her clear memory of these events coincides with her contemporaneous written notes and she has no conceivable reason to mislead this court in relation to them. There is no evidence before the court to suggest that X sustained an accident on that day whether in the home or anywhere else. I am not suggesting for one moment that it is incumbent on Y to provide an alternative explanation for her presentation on that day but the absence of any report of a prior accidental injury is part of the forensic fabric which I have to examine carefully in the context of the totality of the evidence which is before the court.

104. At a meeting with X on 27 May 2017, some weeks after this event, X provided a further account through a BSL interpreter who was assisted on that occasion by a Relay interpreter. The meeting took place in her shared lives placement and her social worker was present. In his report of that meeting, the social worker has recorded the following observation:

“[X] drew her finger across her throat and signed/acted to explain [how] [Y] had said he would kill her, she showed how scared/worried it made her and how much it upset her....”

“[She] pointed to the name [Y], which was also written on a pad and pointed to her ribs; she also kept pointing to her stomach and signed to [the interpreter] in her own sign language.”

“[She] stated [Y] had said [Z’s] organs would be harvested should they return to[to her country of origin]. [She] believes this would happen to both her and [Z].”

105. In this context it is striking to note that in the final analysis prepared by Z’s Guardian, she refers to a meeting she had with Y in December 2019 for the purposes of preparing her report. In paragraph 41 of her report, the Guardian refers to his earlier stance in these proceedings “when he informed the court and professionals that returning to [X’s country of origin]would mean death for X and possible organ harvesting”.

106. The independent social worker has referred in her report to her own meeting with X in mid-August 2017, some five months after she left the home she had shared with her husband. The independent social worker was able to communicate with X on that occasion using symbols and signs which she knew were familiar to her. She states in her report:

“It is my opinion that X clearly indicated to me that Y was violent to both herself and [Z]. X indicated that she thought Y could care for Z if he did not drink alcohol. She indicated that Y drank a lot of alcohol, she indicated that he would drive under the influence of alcohol and that he slept a lot due to drinking alcohol.”

107. The evidence from Z’s Guardian in her final CAFCASS analysis for the final hearing, included detail of a meeting she had with X at her home in the first week of November 2019. Present at that meeting was a BSL interpreter with whom X was very familiar. This is what the Guardian recorded about that occasion:

“X then repeated the incidents that allegedly occurred when she lived with Y. “[Y] grabbed my arm and twisted it, there were three in a bed, he was sleeping there and would hit me in the side, he was asking for sex, he

would go off and then [Z] would be crying, and I had to calm him down, so I was really scared. He was drinking and driving. I was asleep, and I would be made to do it. He would be angry, there were lots of people there drinking and I would be frightened. He would say I'm hungry cook for me [X], so I would give him food and watch the TV.”

108. It is difficult to discern from that report delivered through her BSL interpreter whether X was trying to describe a particular situation or a narrative account of an isolated event, far less a precipitating event which resulted in the physical signs with which she presented on 13 March 2017. Nevertheless it is clear to me that there is a constant thread of consistency in her description of her experience of being physically harmed by her husband and feeling frightened. She contextualises those feelings of fear, which I accept she has experienced, around alcohol and anger. She communicates clearly, as she has on other occasions, an assault (being ‘hurt’) in the context of his ‘asking for sex’.
109. It is right to record at this juncture that Y has told me on more than one occasion through these proceedings that Z suffered frequently with pain in his feet and legs during the night. He has described how Z would wake in the night crying and that X found it difficult to cope with him when she was deprived of sleep. He sought to persuade me during the hearing in June 2019 that it was these episodes in part to which his wife was likely to have been referring, or which had contaminated the interpretation of the account she was trying to give, when she had her lengthy session with Dr Austen.
110. In my judgment that explanation by Y does not address the consistent accounts which his wife has given on several separate occasions to a number of individuals that she had been hurt or hit by Y. In particular, I have the clearest recollection of that part of Dr Austen’s evidence when she demonstrated how insistent X was on ensuring that a particular point she wished to make had been understood. She became physically and emotionally engaged with Dr Austen; her whole posture and body language changed as she sought to establish eye contact before signing and demonstrating what she wished to convey. If Y was even close to the truth when he told me about the innate or internal intelligence which he believes his wife to possess underneath her very

real communication difficulties, it simply reinforces my view that this woman wished those around her to understand what she had experienced. Dr Austen has immense experience of working with communication-disabled individuals. Despite the early challenges which X presented, she was left in no doubt at all as a professional that she had understood that which X was seeking to convey in relation to physical and sexual assaults perpetrated by Y. She was asked more than once about this. On each occasion she said she was “very sure” that X had given her a number of accounts of physical and sexual abuse.

111. In my judgment, there is a wealth of corroboration in this case to support the findings sought by the local authority that (i) Y physically assaulted X, and (ii) he has sexually assaulted her in terms of insisting on sexual relations at a time or times when she was an unwilling participant. I find it is more likely than not that this has been a course of conduct rather than an isolated incident which occurred shortly before her presentation at the school on 13 March 2017. I find that his excessive consumption of alcohol in the months leading up to their separation on that date may well have had a part to play in triggering his aggression and provoking the assaults but that factor can never excuse his behaviour. As a vulnerable woman, X was less able than others to protect herself and Z within the home they shared and I reject entirely the suggestion made by Y that it was he who was the victim of his wife’s alleged assault or assaults.

**(iii) Y locked X both in and out of the family home**

112. Dr Austen covered this ground during her interview with X. This is what she communicated through the BSL interpreter who had been X’s BSL teacher:

*“Key. He’d go out, two of us, locked in, at night, we couldn’t get out.*

*Then I worry. Strangle or suffocate me, said ‘Don’t say anything’.”*

And at a slightly later stage:

*“Told to go out, told to go out ... cold, I was cold. It was locked through the night, couldn’t get out, packed my bag, definitely finished, [Z] choosing things, throwing the bags out, try to make phone call, [Y] saying ‘give me a cuddle’, that was [Y].”*

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113. Dr Austen’s view of these exchanges is that it does appear that Z was with X when she was locked in the house with his mother but she cannot say whether he was with her if she was indeed locked out of the house. In this context, I have to bear in mind Dr Austen’s view that X lacks the sophistication of language or thought to construct a deliberate lie.
114. I know, and have found, that X is most likely to be communicating reliable information when she is relaying a narrative of her actual experience. She describes feeling cold. She contextualises that feeling by reference to what appears to have been an attempt to leave the house with packed bags and an attempt to make a phone call. Z himself appears to have been involved in whatever was happening on this occasion since she did not appear to wish to leave without taking him with her.
115. As part of the material he has produced in response to the local authority’s case, Y has produced a photograph of the door at the front of the barn accommodation which the family was using as a home in 2017. In typically florid language, he has annotated that photograph thus:
- “THE DOOR LOCK ON BARN USED TO SECURE PREMISES ON EXIT  
NOT LOCK SLAVES IN AS ALLEGED”*
116. The wooden front door in the photograph appears to have a glass pane above the middle of the door. Along its mid-point laterally is a substantial metal sliding bolt which is secured by a reasonably large padlock. I do not have any photographs of the inside of that door. The only other photograph of an internal front door is that leading into the main property on the site which was occupied by the friend who had allowed the family to live in the barn. This photograph shows a view from the inner hallway looking out through the upper lattice panes of the front door into the garden beyond. There does appear to be some form of drop-down lever or locking device which has been added to the left and slightly above the more traditional keyhole lock which is an integral part of the structure of the door.
117. I do not have any more evidence from which to assess whether this allegation is likely to be true. None of the social workers who gave evidence were in a

position to assist one way or another. However, what I do have is what I regard to be a very telling series of allegations which comes from Y's own hand. In advance of the pre-trial review in November 2019, he had prepared a series of allegations against his wife in respect of which he sought findings.

118. These included the following:

- (i) Failure to act as a responsible parent and wife
  - abandoning husband and home;
  - failing as a housekeeper;
  - causing distress and unnecessary distress to Z by regularly packing bags in front of him and walking out of the house;
- (ii) Malicious lies and false allegations
  - attacking husband, punching and kicking him when husband rescued Z from her violence;
  - conspiring with [the local authority] and others to have Y prosecuted on a false basis;
  - accepting bribes/money from the local authority to convince her she was safe to prosecute husband with false allegations;
  - emotional blackmail in regularly indicating she was about to leave home and take Z with her leaving husband constantly afraid for her and Z;
  - causing bankruptcy of Y by refusing to make the Baby Dragon World Foods business a success.

119. These allegations tell me much about not only the man but also his motivation and approach to this litigation. Y has resisted my description of him as an arrogant man in terms of his approach to his lack of representation and his ability to run this complex case himself. He has been keen at every turn in his written and oral submissions to the court and others to stress his professional qualifications and his experience as a man of the world in terms of his business connections. I find it difficult to understand why a man would deem it appropriate in this day and age to denigrate his wife as a failed housekeeper. Whilst I do not place undue or inappropriate weight on that particular allegation, it tells me much about the dynamics of their personal relationship

as husband and wife. His schedule also provides solid corroboration for the description which X has given to Dr Austen of her attempts to leave the family home and Y's attempts to prevent that happening. It begs the question: why was she so anxious to remove herself from his sphere of influence if she was part of a family household which was focused on Z and his best interests? She has plainly had strong maternal instincts throughout the local authority's involvement with the family; that is attested to by several of the social workers and the shared lives carers with whom she has lived for the last three years and more.

120. I have reached the clear conclusion that there was more than one occasion when Y either prevented his wife from leaving the family home by locking the door to the barn when he himself went out or by locking her outside the barn when she was attempting to leave the home with Z. I cannot be any more specific about exactly what happened on these occasions but I am satisfied on the balance of probabilities both from what she herself has said, from Y's own allegations against her, and from the presence on the door of the bolt that something of this nature occurred. Her account to Dr Austen certainly reinforces what she has communicated on several occasions and that is her wish to live separately and apart from Y

**(v) Z was present when Y harmed X and (vi) sexually assaulted her**

121. I have already described the sleeping arrangements which the family made in the upstairs bedroom at the barn. I have photographs of the bedroom in the bundles. It was the single upstairs room which was above the single room in the accommodation downstairs. It is a small and slightly chaotic room in which there are piles of papers and numerous books along with a computer screen, Z's toys and 'Mister Man' books and the personal items of day to day life. Its general layout is not unlike a large cabin on a boat. Given the years which this family spent living on boats, this is perhaps a living arrangement with which they were used. The point is that Z's bunk bed is situated directly above the double bunk which was used by X and Y. He would have been sleeping but three or four feet above them on a regular basis.

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122. Mr Green, on behalf of the local authority, asked Dr Austen during the hearing in June 2019 whether she was sure that X had been describing physical and sexual assaults which occurred whilst Z was sleeping above his parents in that smaller bunk bed. Y was, of course, present on this occasion and was able to put his own questions to Dr Austen. Dr Austen told me that she was sure this was what X had communicated to her. What she did not know was the spatial context of her communicating that “[Z] was over there” whilst this was taking place. Dr Austen’s clear impression of what X had been telling her through her BSL interpreter was that Z was either in his own bunk bed or in the double bunk bed with them at the time. In the written report which she prepared in the immediate aftermath of that interview, she said:

“3.25.2 It does appear that [Z] was present when [Y] harmed [X] and when [Y] was drunk.

3.25.3 At times when [X] describes trying to resist [Y]having sex with her, [Z] was either in the single bunk bed above the adults’ double bed, or next to [X]in the double bed.”

123. Whether or not I treat these accounts as hearsay evidence or as a direct account coming from [X] herself through her BSL interpreter and Dr Austen, I have reminded myself again about the need for caution in reaching my conclusions. It seems to me unlikely that the opportunity to participate in intimate relations was restricted by [Y] in the manner he suggested to those occasions when he and [X] could use the bedroom in the main house. I think it is far more likely that, whether or not after consuming alcohol to excess, he sought sexual gratification from his wife whilst in their own bedroom in the barn. This appears to have been X’s experience and, as I have said, her husband has declined to enter the witness box to give the court his own account. On balance, I am persuaded that it is more likely than not that Z was present on occasions when his mother was harmed by his father both physically and sexually.

**(vii) X is unable to care for Z without considerable support**

124. There is no issue about this finding. It is agreed by all parties including Y.



*Findings sought by Mr Jefferies*

125. At the pre-trial review on 25 November 2019, Y confirmed to the court that he was no longer seeking findings against his wife. I have already summarised some of the findings which he had been seeking against her. He was also seeking a number of findings against the local authority as a body and against its individual officers and social workers. He has described them as an “old wild west ‘Lynch Mob’” and as part of a “‘Me Too’ group of women’. He has accused Z’s Guardian as having organised a ‘witch hunt’ and supporting a malicious criminal prosecution against him. He accuses the local authority of having committed criminal offences through ‘known bias, fear and motive of a massive human rights liability’. He has accused all the judges in this case of “collusion at a very high level (including in the Court of Appeal) ... to cover up serious violations of law”.
126. I am entirely satisfied that Y did indeed indicate at the November 2019 hearing that he was no longer intending to pursue this raft allegations at the final hearing. I approved the order which I made on that occasion which included that recital and the abandonment of his application that I should recuse myself. It is right to record that he subsequently denied that he had made any such concessions. Had he chosen to take any active part in the final hearing for which ten days had been allowed, I anticipated that he would have sought the court’s permission to pursue his findings. He elected to abandon any role in the hearing. He left the court and refused the invitations extended to him to return. In these circumstances, he has forfeited any entitlement to seek relief from the court in this respect.
127. However, I regard it as only right to record in my judgment that I can find no sound or rational basis for any of his complaints against the local authority or any of the individuals who have attracted the completely unjustified invective levelled against them by Y. He has throughout, in my judgment, made a very difficult job far more stressful for these individuals than it should have been.
128. In this context, whilst not wishing to single out any one individual, I do consider it appropriate to mention the local authority’s legal adviser. She was

singled out by Y as the person within the local authority's team who had intimidated X's family and, through her contact, had procured a situation where they were no longer willing to communicate with him.

129. By my order dated 25 November 2019 I had given the local authority permission to communicate directly with X's family. The country's Embassy had already been notified of the existence of these proceedings concerning one of its nationals. Contact had already been made with an American lawyer based in X's country of origin, who was the Country Lead of the Legal Impact Hub for an NGO in that jurisdiction. In the same order, I gave permission to disclose to that organisation the fact that X had secured indefinite leave to remain with Z in this jurisdiction. These directions were designed to enable her family members to participate in these proceedings by way of a video link and interpreters if they chose to do so. I was keen to ensure that they had a reliable channel of communication with the court in terms of the decisions which were being made for Z and his mother's futures.
130. As a result, a meeting was convened on 17 December 2019. It was set up by email and conducted through Skype for Business. It was attended by X's mother, sister and brother with an interpreter. I was told that they had travelled some considerable distance to make themselves available for the Skype meeting. The American lawyer was present throughout and a careful note was taken during that meeting and subsequently approved by both lawyers present as an accurate account of what had been said. The only issues discussed were those which I had previously authorised as legitimate lines of enquiry. Having read the note and listened to the local authority's oral evidence, I accept that she kept to the strict confines of her brief and did not stray beyond the parameters I had set. I am satisfied that the local authority lawyer complied strictly with the orders I had made and nothing she did in this context gives rise to any legitimate censure or criticism notwithstanding the allegations which Y seeks to make against her.
131. I did not hear any live evidence from the family members at the final hearing because Y's decision to absent himself from the proceedings meant that I did not hear from him directly about what he has called 'the [overseas] option'. It

is nonetheless an aspect of his case in relation to welfare decisions for Z which I shall address.

**Welfare decisions: Z's best interests in terms of an outcome**

132. The local authority's final care plan for Z if an order is made is dated 12 December 2019. It envisages that Z and his mother will remain living in a fully supported environment in the shared lives placement in which they are presently living. The local authority has secured a commitment from its senior team manager that it will continue to fund this placement until Z achieves his majority at the age of 18 years. In the absence of a care order, his intention would be to maintain that same financial commitment although he can offer no guarantees were Z not a child in respect of whom the same statutory obligations arose. In terms of Z's ongoing contact with Y, the local authority's position remains as it was before he absented himself from the final hearing. It recognises the importance to Z of an ongoing relationship with his father notwithstanding the significant difficulties to which Y's conduct of this litigation have given rise.
133. For these purposes I have borne well in mind section 31 of the Children Act 1989, the terms of which I have set out above. Before it can make a care order, section 31(2)(a) requires the court to reach a conclusion that, at the time the proceedings were issued, Z was suffering, or is likely to suffer, significant harm. My specific findings in relation to the harm inflicted on Z's mother by his father and Z's own proximity to those incidents have been reached from the foot of all of the evidence which is now available to the court. I am entirely persuaded that Z was indeed suffering harm as at March 2017 and that such harm was attributable to the care being given to him if an order was not made not being what it would be reasonable to expect a parent to give him. This has been a challenging case for all the reasons I have explained and the evidence gathering which has been ongoing throughout has informed my conclusions in relation to the state of affairs which existed within Z's home as at the date when those proceedings were initiated. Later acquired information as to the state of affairs as at March 2017 can properly be admitted and taken into account as part of the court's overall assessment: see *Re G (Care*

*Proceedings: Threshold Conditions*) [2001] 2 FLR 1111, CA. I must apply an objective test (see *Re D (Care Order: Evidence)* [2011] 1 FLR 447, CA) and I approach the issue of threshold from the perspective of this child and not from that of his parents: see *Re H-L (Children: Summary Dismissal of Care Proceedings)* [2019] EWCA Civ 704.

134. For reasons outwith her own control, X was unable to provide the care Z required without significant support in the household in which she was living. Far from receiving that support, she was, as I have found, living in a home where, for at least several months, she was the victim of domestic abuse. Y was the perpetrator of that abuse. In that environment, Z was suffering, and likely to continue to suffer, significant harm. Pursuant to the interim care order which was made by the Circuit Judge, both Z and his mother were removed from that environment. All the evidence now points to a situation where Z is flourishing both at home and at school. I am satisfied that, had that removal not taken place, there was a real possibility of serious harm which could not be sensibly ignored having regard to the gravity of the emotional and psychological harm to which Z was exposed when the local authority became involved with this family. Y's attitude to this litigation throughout and the wholly unjustified allegations he has made about his wife and others convinces me that he lacks the insight to understand how his behaviour has impacted both X and Z. I do not consider that there were any interventions which this local authority could have made either at the time or since which would have made that home a safe environment for Z or his mother given the very particular circumstances of this case. In this context, whilst I accept that their intervention was an interference with Y's Article 8 rights to a family life, it was an entirely proportionate interference having regard to the competing rights of both X and Z in terms of this child's need for protection. Z's best interests remain the court's paramount consideration but I bear well in mind that those best interests include his right to be brought up by his natural parents.
135. This is *not* a case where the local authority's care plan involves severing Z's family ties. There is no application before the court for an adoption or a

placement order. The court's assessment of these parents' capacity to care for their child must include consideration of what support could be provided by the local authority. That is what this particular local authority has done.

136. The Official Solicitor is satisfied that the care plan for Z is in the best interests of his mother and that the arrangement accords with her wishes as expressed to Dr Austen in May 2019 and, most recently, to her solicitor through a BSL and deaf relay interpreter on 6 January 2020. The Official Solicitor recognises that the care plan is entirely on all fours with the principle of 'parenting with support' because of any particular needs or deficiencies in their own specific ability to care properly for a child: see *Re D (No 3)* [2016] EWFC 1 at para 152. In this context I accept that the local authority has recognised the close bond which exists between Z and each of his parents. It has acknowledged her ability effectively to parent Z with the support which has been put in place. She, for her part, has adopted wholeheartedly the need for that support and is engaging fully with it in terms of Z's needs in his day to day life. As X's social worker was able to demonstrate to me so graphically during the course of her oral evidence to the court, X's abilities in terms of her capacity to communicate effectively appears to be on an increasingly steep upward trajectory with the help and support she is receiving. Like Dr Austen, I share the hope that these 'islands of ability' will expand significantly in the future. What is not in doubt is that she is currently providing effective and loving parenting with the support which she has and that Z is securely attached to her and wishes to remain with her. The counterbalance in terms of his ongoing relationship with his father is the local authority's recognition that there will be regular ongoing contact between Z and Y. As matters stand, and because of his failure to engage with the parenting assessment which I directed, Y represents an unassessed risk in terms of contact arrangements. The care order which the local authority seeks will provide a measure of flexibility in terms of these arrangements.
137. The Guardian supports the making of a full care order in this case but on the basis that any order I make should include a recital that if the local authority seeks any material amendment to its current plan, the matter should come back

to the court for further review. The Guardian supports the principle of ongoing contact between Z and his father but remains concerned about ongoing risks in the absence of any recent assessment of Y. She is satisfied that the regularity of that contact will be reviewed on a regular basis of six monthly intervals. She remains concerned about Y's alcohol misuse in the absence of regular testing and she considers that this represents a potential risk of neglect and emotional harm for Z if left unmonitored.

*The [father's] plan*

138. Given his absence from the final hearing, I did not have an opportunity to hear, or explore, Y's proposed options for Z. He had previously said that if X was unwilling to return to the marriage and live together with him and Z in a family home, he should have sole care for Z going forward. At other times, he has stressed to me that he does not wish to remove Z from the care of the mother he acknowledges he loves and needs.
139. Most recently, he prepared a different option for the court. This is his '[overseas] option'. Notwithstanding the previous warnings he had given to the court and the professionals involved about the dire risks presented to Y and Z in the event of a return to her country of origin<sup>1</sup>, Y has performed something of a volte face in recent weeks. Unbeknown to anyone, and with no indications of his intentions in advance, he left England for two weeks in September 2019 and travelled to X's country of origin to seek out X's family. I know not how he afforded this international travel given his self-professed insolvency. When I became aware of his latest proposals, I made it clear to Y that if he was intending to ask the court to consider this as an option for Z, he would need to file evidence about what Z and his mother's circumstances would be in the event of a return to that country, including provision for schools and medical facilities, as well as living arrangements.

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<sup>1</sup> He had previously told the social worker, and others that if X and Z were returned to her country of origin, whether as a result of deportation or for any other reason, they would both be killed. In one of his written presentations to the court at [C:321] he said that a return there would result in a life of slavery for X, and being sold or killed for "spare parts".

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140. On 23 September 2019 he produced a document entitled “A Plan for Z’s Future”. It is predicated on the basis that his meetings with X’s family revealed a significant change in their circumstances since he last met the family in 2011. He says that he is now regarded as a ‘respected son in law’ and ‘is not falsely regarded as a violent sex monster or people trafficker as he is by the UK authorities’. He maintains that he is now ‘welcomed back into the family with [Z] and [X]; the family having put their trust in [him] to act on their behalf to extract [her] and son from the coercive, destructive control of the UK authorities’.

141. He maintains that:

- returning to [this country] will meet both [X] and Z’s needs;
- she will be reunited with her family and in a culture she understands;
- he could join them on a 12 months renewable business visa. He intends to establish a family business involving X and her family;
- Z would thereby gain experience of a new culture and become bilingual;
- The family is ‘noticeably better off’ than when he last met them nine years ago and inward investment in that country is strong;
- Z’s grandmother has had ten children and there would be plenty of young companions for Z;
- in the event that [X] and Z were to return to live [in her country of origin], she would have the choice of reuniting with him there in order to share parenting. (“[Her] family see Y as a respected family member”);
- her family will be the court’s guarantee that Y ‘has not and will not be guilty of any abusive behaviour towards her or Z’.

142. There is no further detail whatsoever of the precise living or schooling arrangements for Z in that jurisdiction. Y merely contends that the case “can now be concluded in everyone’s interests without further conflict, prosecution of guilty parties in the establishment, and international public exposure of the criminal behaviour of senior members of the UK legal system and family courts”.



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143. As a result of his trip to X's country of origin, Y filed with the court a certified translation of a statutory declaration dated 20 September 2019 upon which he had secured the signature of X's mother and sister. It is framed in these terms:

“This is a preliminary document issued in urgency owing to the advanced state and harm being inflicted by proceedings; To be followed by a legally notarised Statutory Declaration.

We trust the court will treat this declaration with the respect it deserves coming from the ... family of a ... citizen currently being held in effective captivity by a UK state agency.

The state of proceedings to date already make this a serious international incident involving violations of fundamental human rights and criminal law by UK authorities.”

It went on to demand the cessation of all proceedings involving X and Z and the immediate halt of any psychological or other assessments of either mother or child. It purported to record the family's views that the proceedings ongoing in this jurisdiction were criminal in their nature. It required any future correspondence with the family to be “strictly through [Y]”. “We will not respond to any attempts at direct contact with us. You have attempted to manipulate us enough to date.” It concluded with an “ACCESS DEMAND” that Y and all parties know to X be given “immediate, free and unsupervised access to mother and child”.

144. I am in no doubt whatsoever that Y was the author of that document, word for word, and that X's mother and sister had no real understanding or comprehension of its contents. In my judgment it is a further manifestation of his complete contempt for these proceedings and his utter failure to comprehend the issues with which the court is concerned. It is yet further evidence of his complete lack of insight into those issues as they touch and concern Z's welfare and his future.

145. During the Skype meeting on 17 December 2019 with the English and American lawyers, X's family confirmed that Y had paid the family a sum of US\$100 to enable them to travel to meet him to sign the statutory declaration. They had been told by Y that the local authority had ‘locked away’ both X and Z. Her mother explained during the course of the meeting that she had



reported her daughter as missing to the local police when she first disappeared. She also sought help from various organisations. She found out in 2017 that her daughter was in the United Kingdom. They confirmed that they no longer trusted Y who had asked them to give evidence at the final hearing. They believed he was telling them lies and did not wish to participate in the final hearing.

146. It is quite plain to me from all I have heard and read that Y resents any element or retention of control in his family's life by this local authority. He wishes to be entirely free to organise his family's life without any intervention by this court or the local authority. I have, of course, considered whether private law orders under section 8 of the Children Act 1989 would be a better outcome for Z. A child arrangements order would mean that these parents would not have to share parental responsibility for Z with the local authority. However, in my judgment that course would considerably weaken the protective infrastructure which the current care plan provides in terms of the maintenance and durability of the current shared lives placement which is home to X and Z. It would remove the ability of the local authority to ensure his ongoing safety and wellbeing through regular reviews and medicals.

### **My conclusions in relation to the welfare outcome**

147. My overriding concern in the context of any private law context or resolution is Y's inability to reconcile himself to X's clearly expressed wishes about a continuation of their own relationship as married parents to Z. I am entirely persuaded that she would be quite unable to navigate any contact arrangements if those had to be agreed or enforced directly or indirectly with Y. This is a woman whom I have found to be unusually vulnerable in terms of the dynamics of her personal relationship with her husband. Z is getting older but he is still not yet at a stage where his own wishes and feelings would be a sufficiently protective factor in the context of any private law orders. I consider it vital for the successful maintenance of Z's entitlement to enjoy a relationship with *each* of his parents that the local authority is given some status through shared parental responsibility in those arrangements.

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148. Y will not like that element of local authority control over his relationship with Z but I am entirely satisfied that it is necessary, proportionate and in Z's best interests in this particular case. There have already been difficulties over the contact arrangements since the conclusion of the final hearing and clear and careful arrangements will need to be made not least to accommodate the national emergency in relation to Covid-19 which has emerged since its conclusion.
149. The social worker has had a lengthy involvement in this case with X and Z. She describes the relationship between them as very warm and affectionate. She describes him as a delightful child who is reaching all his milestones and who is now happy and settled in his school and in his home. The social worker does not believe that X would be safe in the community on her own with Z and I share that concern. I agree with her that she would be quite unable to manage any approach by Y without support. I heard reports that Y has already been seen at Z's school recording the arrival of the family friends without the school's permission. The social worker does not believe from her own conversations with Z that he has ever considered the option of living full-time with his father. She, too, speaks of the lack of insight on the part of Y to which I have already made reference in my judgment. It is clear to me that he seeks to continue to exert some form of influence over X in relation to their ability to successfully co-parent Z. The social worker received a call from the local Housing Officer who informed her that he had made himself homeless and was requesting new accommodation in the vicinity of where his wife and child were now living.
150. In terms of contact, the social worker accepted that Z loved his father and wanted to see him but she had significant concerns as to what would happen on the ground when these proceedings conclude. I share her view that Y's personality and his lack of insight into the issues in these proceedings prevents him from accepting professional judgments about Z's situation. She has described him as a challenging and paranoid individual. I accept in this context that he is an individual who has been used to being in control of his life, his business fortunes and his family arrangements. I am satisfied that the

loss of that control through local authority and court intervention has seriously undermined his sense of ‘self’ and his ability to view objectively events as they have unfolded in the context of this litigation.

151. I am left in no doubt at all that I should make a final care order in accordance with the local authority’s care plan. I accept that recent events in terms of the COVID-19 emergency will have destabilised the proposed contact arrangements, just as they have for very many families who share the parenting of their children. The Guardian recognises that ongoing contact is important for Z in that his father can do with him things that his mother cannot. The President of the Family Division has very recently issued guidance on the subject.
152. What I propose to do is to convene a further hearing which can take place remotely by Skype once all parties have had the opportunity to digest the contents of my judgment. I will ask my clerk to liaise with the parties to agree a convenient time when this might take place. It should be this side of the Easter vacation if at all possible. If court facilities are not available, we shall deal with the hearing by a dial-in from wherever counsel and the parties are self-isolating or alternatively from any convenient location. I will require short, concise position statements from all parties, including Y if it is his intention to play any further part in these proceedings. I suggest that those position statements should be no longer than three sides of A4. They can be sent to me electronically and I would ask the legal; representatives in the case to agree a form of draft order insofar as that is possible in the absence of any final rulings on its form.
153. The local authority no longer seeks an exclusion order in relation to the environs of X’s accommodation. It is not clear to me whether any of the parties wishes to pursue an application pursuant to section 91(14) of the Children Act 1989. These are all matters with which I will deal at the next hearing which I anticipate should be listed for between one and two hours depending on the issues which need to be addressed.

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*Order accordingly*