



must then elicit evidence, interpret evidence and literature/research only in a manner consistent with that, whilst being totally unreceptive to other possible interpretations. Dr. Lam's observations are important when one considers (i) M's evidence of what she says Z has told her; and (ii) the concerns aired by Dr. Brown some of which arose from that 'disclosure' as well as from certain things Dr. Brown felt that Z had said, as well as the things Z had had refused to say about F in her presence. They are consistent with M's analytical/academic literature-based approach used to support the allegations she raises and to challenge in cross-examination the nature of the assessments conducted by and the conclusions reached by Dr. Lam.

177. I have carefully considered the literature provided by M and her submissions about the same, however, I do not find it to be a helpful or necessary exercise to carry out an academic analysis of the same in this Judgment, as I am satisfied with the manner of Dr. Lam's assessment and how she reached her conclusions. The observations are consistent with the impression I gained throughout these proceedings from the wider evidence, from the nature and manner in which M conducted her case at the final hearing (especially during her detailed cross-examination of Dr. Lam and Mrs. Robinson) and from being able to see M's demeanour in the Courtroom (sometimes when it was quite evident from what was happening during earlier hearings that the advice M was then being given from her attorneys was not consistent with her views, for example about child contact arrangements). Dr. Lam's observations are important and need to be set out in detail herein:

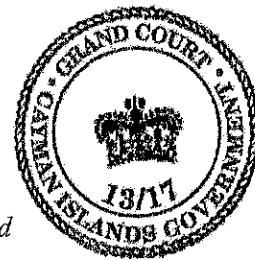
"With regard to parenting, (M) explained that she has studied books on parenting and sought professional advice. Her focus appeared to be 'doing the right thing' and less so on the intuitive. She did not appear to have explored her insight on



how all these events may impact on (Z) if the allegation was not founded. She seemed invested in the idea of getting (Z) to 'tell the truth' and provide 'evidence' of sexual abuse - by providing literature findings on sexual abuse, a chronology of (Z's) complaints regarding her private parts, her observation of (Z's) anxiety and distress, and her attempts to elicit information from (Z) about unsafe touching. Although the conversation sounds provocative, it is worth noting that in the mind of a mother who believes her child has been sexually abused, it is understandable that she may be more hypervigilant. However, the risk of leading questions is high.

(M) seems emotional avoidant and overly factual in her narrative. She is very sensitive to distress, for example, describing very detailed facial expressions and body movements of (Z) in certain instances without the wider context of the situation or considering the norms of this age group- how (Z) was avoidant of the topic of visitation with her father in front of two psychologists in a clinical setting, and how (Z) turned her face away when she tried to ask about 'unsafe touch' and 'scary things'. These topics are naturally confusing to a child of her age. (M) explained that she provided (Z) with an explanation regarding the lack of contact with her father as being in relation to needing to 'solve a mystery' (making reference to the medical issues with (Z's) private areas- redness and soreness). She reportedly emphasized to (Z) the need for (Z) to keep safe, introducing the idea of consent. (M) reportedly attempted to elicit information from (Z) and made reference to the 'unsafe touch', and linking the 'mystery' to 'scary things'.

During the feedback session (at the time when this report was ready to be released), (M) appeared angry when she learnt that the assessor had found no signs that were indicative of abuse. She questioned the interpretation of the video data and explained that she has undertaken research on the different types of attachment style. (M) explained that she has asked (Z) about her specific response during one particular activity during the father-child interaction session and questioned the assessor in a cross examination manner (e.g. just say yes or no; is it 'avoidance attachment or not'). (M) also made reference to how she would have a different interpretation when she reviews the recording or



shows it to someone else. (M) also questioned the assessor about how she would interpret specific facial expressions in a specific situation. (M) asked the assessor to speak to (Z) or provide a recording to explain to (Z) regarding how she would spend more time with her father (which is not what the assessor had said). (M) also made reference to new disclosure that she has elicited from (Z) and how that would appear in her latest affidavit. (M) appeared to focus on the findings relating to the father and (Z) interaction, making it hard for her to focus on the findings of (Z's) emotional world. She seemed unable to shift from the theory of abuse and consider other potential theories. (M) appeared to find it hard to accept that the assessor did not assess certain profiles of father (for example 'sexual deviant'). The assessor explained that the assessment of such profiles was not within the remit of the instructions and that the assessor has no ground to invade." [My emphasis]

Although all of these observations are important, I note when considering the timing of 'disclosure' made by M or referrals made that to Dr. Lam reported that M had told her that she had "elicited" information from Z and that, although not shared with the doctor, conveniently it would be set out in her upcoming affidavit.

178. When summarising her findings about M, Dr. Lam added:

"Mother seems to be focus in, chronology of safeguarding concerns, the concern of child abuse, and the downfall of the father, increasing her anxiety to be 'heard' and her concerns to be validated. In turn, this may be making her hypervigilant and missing the opportunity to see the wider emotional impact of the situation on the child and any other possibilities to understand (Z's) behavioural and emotional needs. However, it is worth noting that in the mind of a mother who believes her child has been sexually abused, it is understandable that she maybe more hypervigilant. However, the risk of leading questions and parental alienation is high.

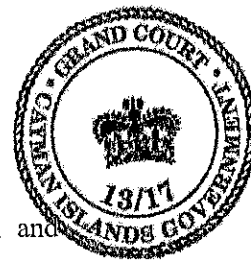
Overall, (Z) appeared clingy and showed more signs of regression when she is around her mother. According to clinical observations from an attachment perspective, mother seemed to be reactive to (Z's) emotional reaction, (Z) in turn received what appeared to be an excessive amount of negotiation and reassurance to manage transition. It is worth noting that children often respond to an adult's anxiety (being hesitant to dealing with distress/unable to regulate the child's anxiety) and this may heighten the child's anxiety and ability to manage changes and transition.” [My emphasis]

179. Dr. Lam's observed that F was “defensive” during his appointments, but accepted that it was understandable that he may be hypervigilant regarding being judged and scrutinised due to the nature of the allegations. She stated that:

“Father has an open and realistic view on parenting. Despite his defensiveness, he is open to recommendations regarding what is best for (Z). His main focus appeared to be on what is best for (Z), having both parents in her life and her development- how best to support (Z) through this and move on to a healthy life. Although father's distress on the situation, he made no attempt to alienate the mother or create any negative impression of the mother. In fact, he appeared quite protective of his family as a whole, including (M), (Z), and (his wife). He spontaneously spoke about his experience as a father and the joy of seeing (Z) grow up and the sadness of missing some of the crucial moments in her life due to the custody.

Father's strength seems to be that he does not react to (Z's) regression but provides structure and increased nurture that allows (Z) to face changes and transition.”

180. The impression gained from Dr. Lam's observations, which are consistent with my findings having heard F's testimony and observed his demeanour, is that this is a father who is trying his best to understand how this has affected Z, recognising the confusion



she must have felt following the allegations, including from the conversation and questions she has had to face as well as the limiting contact arrangements. Dr. Lam commented on how F sensitively indicated that, although he was worried about Z's perspective of him and how that may have been affected by what she knows (and I add to that, by what she had been told), he understood that there were issues which would not be appropriate to share with her. Unlike M, who spent considerable time concentrating on historical issues relating to F and on the allegations, Dr. Lam said that F spontaneously spoke to Dr. Lam about the joy of being a parent and concentrated on his concern about (Z's) physical and emotional development. Dr. Lam noted that F:

"insisted that (Z) needs both her mother and father in her life, and that he would do what is best for her."

Dr. Lam added:

"Despite the distraction of sharing his difficulties with this process of court proceedings and allegations, (F) could be re-directed to answer questions and focus on the assessment and background information. He appeared to have a balanced and realistic view of 'good enough' parenting and the value of attachment/bonding...

...During the feedback session (...), (F) appeared pleased to learn that the assessor found no sign of abuse. He seemed saddened to learn that Z is potentially at risk of attachment rupture due to the on-going family conflict. He was receptive to hear the areas of improvement in his parenting style and focused on understanding the recommendations and how he and his wife can best support (Z)."

181. Throughout these proceedings, M has greatly criticised the work undertaken by and the involvement of DCFS, particularly in relation to Mrs. Robinson. M argues that the DCFS



assessment was incomplete, and that it failed to adhere to or adopt appropriate assessment procedure set out in guidelines where there is sexual abuse alleged.³⁶ M felt that the DCFS and MASH's conclusions that there is no evidence of sexual abuse and that M is improperly making allegations and that Z being coached are fundamentally flawed. M contends that one of the many grounds why little or no weight should be placed on Dr. Lam's assessment and recommendations is that her conclusions were based on the flawed position taken by DCFS. When one looks at the report, I note that as part of the background information gathering exercise Dr. Lam had an interview with Mrs. Robinson, as well as reading case notes and reports she had produced. What flows from that interview and from the reading of the background literature occupies a minimal part in 48 page report. Although Dr. Lam acknowledges Mrs. Robinson's concerns, it is clear from the rest of the report that Dr. Lam primarily based her balanced conclusions on her own thorough clinical assessment as well as considering what the parents and Dr. Brown also shared with her.

182. Dr. Lam noted from her telephone discussion with Dr. Brown that she had been working with Z for over nine months. However, importantly she also recorded that:

"Up to the date of this interview, no disclosure related to abuse was made. No observation of sexualized behaviours or trauma play was reported." [My emphasis]

However, Dr. Lam recognised that Dr. Brown continued to express concerns about (Z's) emotional avoidance of separation anxiety with her mother.

³⁶ See paragraph 249 herein.



183. Having had the opportunity to view the play based observations on the video recordings, it is evident that the written report of Dr. Lam accurately presents what happened during those sessions. She noted that at the first session Z was reluctant to separate from M, so M stayed in for the first half hour. After that period of time Z *"willingly stayed"* with Dr. Lam and there were no later issues at the sessions.

184. Dr. Lam noted that at the ending of every session the transition out of the playroom was smooth. However, as soon as Z reached the waiting room where M was sitting, Z resisted to leave the office and showed a:

"sense of regression-clinging to M, climbing on her lap, reaching for hugs and reduced use of language."

M responded appropriately to this, but on one occasion when Z was clingy M tried to whisper to Dr. Lam that *"it is dad's day"*. It is clear that this was M trying to indicate or infer that Z was clingy because she did not want to see F. Dr. Lam intuitively noted that the regressions was observed on all three visits. It is, however, an example of M seeking to construe an instance of Z's behaviour in the way that she feels supports her contention of abuse or reluctance in Z to see F, rather than there being another unrelated reason for it.

185. Similarly Dr. Lam said that at one session when the therapy dog greeted them, but then had to remain outside of the playroom, Z stopped and looked at M. Dr. Lam stated that M was:

"quick to label the hesitation as 'here is the crying face' and reached out to comfort Z".



Z then turned and climbed on M's lap and buried her face and whined softly. Dr. Lam noted that this was only the first time that Z had met the dog and that they had no existing relationship or bond that "*necessitates the distress of separation*". Dr. Lam opined that although M was reactive to Z's emotional reaction, she gave an excessive amount of negotiation and reassurance to manage the transition. Dr. Lam stated that:

"It is worth noting that children often respond to an adult's anxiety. Hesitation to deal with distress and being unable to regulate the child's anxiety can heighten the child's anxiety and ability to manage changes and transition."

186. When I consider this observation I also recall the following part of the cross-examination of M by F's Counsel which also show that how M's reacts and how M's own emotions increase the anxiety in the Z and may promote an overly emotional response.

Counsel (C): *You have a child who has winced when you wipe her, and then we're crying.*

M: *She started crying when she said yes. And then I start to cry because I know how long it took for her to heal. She is in pain.*

C: *I'm wondering if you think a child seeing her mother cry is upsetting?*

M: *She was crying already and then I started to cry in response.*

C: *Parents generally are expected to help children manage their upset, you don't appear to have done that on this occasion.*

M: *I was consoling her and yes I did share tears, I was being a sympathetic parent who shared in her child's pain.*

C: *You don't think that your mirroring would upset her more?*

M: *No I don't believe so, she was holding this pain inside and hiding it, I asked the question and it all came out. I shared in her pain. I asked her if it happened again and she confirmed it. She broke down as she was saying yes. I responded. I did so with tears in my eyes. I believe that to be an empathetic parent.*

C: *You don't agree that it may have upset (Z) further?*



M: No I feel that because she was crying, if she was seeing myself cry for her pain it acknowledged her feeling.

C: Does (Z) often see you cry?

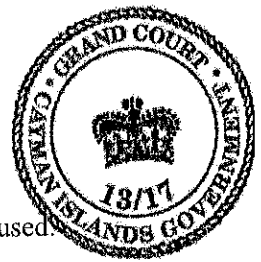
M: If I see a sad movie, yes she does see me cry. Or if she's crying then chances are that it will probably cry too. If it's a physical hurt and I console her, but if she's expressing / asking if they hated her .yes, I cry if her heart is hurting."

187. Consistent with Dr. Lam's observations, the video showed that M was good at providing verbal instruction and praise and M and Z clearly have a very loving and caring relationship. They had "*a few lovely moments of eye contact*", with M leaning in to her mother.
188. Dr. Lam stated that when Z arrived with F and his wife, there was no issue with transition, as Z entered the room "*cheerfully*", "*playfully in a carefree manner*" and was "*eager*" to show F things in the room that she liked. Dr. Lam felt that F did a good job regulating Z and the play by making the play stimulating as well as being able to focus her attention on to the organised tasks when she digressed in natural way. She felt that F was nurturing, was able to attend to Z's needs by anticipating her responses and providing structure when there was a need to reduce her anxiety. Dr. Lam observed that they both had many attuned moments and giggles.
189. There was one part of the play session where F played along with Z in hide and seek. When the video was being played, before any questions had been asked about this, I observed Dr. Lam smiling broadly at this scene. The video showed F had been out of the room for one minute as a part of the task. When F came back into the room Z was hiding under the desk. F pretended to not know where she was, but then said "*found you*" and



they both laughed and embraced each other. Sadly M, based on her interpretation of academic literature, felt it appropriate to put a negative twist on this very natural, playful and loving exchange between F and Z. M totally misconstrued Z's hiding under the desk awaiting F's arrival as Z cowering away or hiding from F as she was scared of him. Nothing could be further from the reality when one watches the video and in particular Z's happy demeanour. In fact, when persistently challenged by M in cross-examination concerning her positive interpretation of this scene one could see that Dr. Lam becoming rather bemused by M's negative interpretation of the hide and seek game and by her line of questioning. Because I was able to watch the video I could see how greatly M was misinterpreting what was an example of healthy father/daughter play. Likewise, at a different stage in the video, when I viewed Z grabbing F by his arm and making him swirl her in the around the room. M's interpretation of this physical interaction causes concern about the way in which M seeks to rely upon the nature of the games played by F and Z which she says Z told her about in February 2019. There is no persuasive evidence that the boisterous games when Z was having contact with F were inappropriate. Dr. Watkin and Dr. Brown felt that they were, but that was based on what M had represented to them and not anything that they had heard Z say. These doctors, unlike Dr. Lam, had not had the benefit of seeing Z and F playing together.

190. When M took Dr. Lam through the various games/task between F and Z shown on the video, she sought to shed a negative light on all but one, namely what she termed "*the lovely moment*" in the exchange between F and Z when Z retained his watch to make sure that F came back into the room when the task required him to leave the room briefly. M put to Dr. Lam that Z's reactions/behaviour in the sessions were indicative of types of



conduct which research provides may be seen in a child who has been sexually abused.

This line of questioning was based on M's research of literature supportive of her belief that sexual abuse by F has occurred.

191. M stated that there was evidence in the exchanges in the video of dysregulation, for example as Z when F was playing boisterously with, as M says Z does not play like that with her or at school. Dr. Lam said that she had seen Z being playful at her school. Dr. Lam's view was that Z was excited to be playing with F and that there was "*fluidity up and down*" as she wanted his attention. Dr. Lam highlighted that F gave instructions and in the block building game was attuned to Z and plenty of giggling between the two of them.

192. M stated that there was evidence in the envelope game shown in the video that Z was bored by being there with F and Z was trying to put distance between herself and F. Dr. Lam disagreed and said that Z had already played the same game with M and that she:

"did not see boredom. I see the opposite, playfulness. There was full eye contact and ongoing interaction. She is not putting distance between the two of them. I see affectionate child who wants to get really close to her father."

M said there was evidence of Z's actions being avoidance of F, which Dr. Lam did not agree with and she emphasised the significant amount of eye contact throughout the session.



193. Dr. Lam ended her answers to this line of questioning by M by saying something very telling. Telling not only about M's approach to these matters, but also about the approach adopted by Dr. Brown. Dr. Lam said:

"We have different standpoint. The lens I put on, I do not assume something bad. I look through an objective lens having regard to age and temperament of the child and existing pattern of interaction with parent."

Dr Lam also stated:

"Our role is not to start on the basis that this has happened and we find evidence. We go in with an open mind and look at multi-damage factors to see how/what conclusion we draw. We look at literature out there and guidelines out there and assess the family setting. Using all of that I did not find any indicating factors. I use multiple tools and measures to reach that conclusion, not just look at one specific thing."

194. Dr. Lam noted that both parents enjoyed their time with Z and:

"were comfortable with physical touch, holding, cuddling and feeding."

Dr. Lam felt that Z is used to taking control and that they may need help to give more structure rather than turning authority over to Z and not challenging her. The impression I had from watching the videos is similar to that expressed by Dr. Lam in her oral evidence that Z:

"loves both of her parents" and "she has such a good attachment and loving bond with both parents."

I note the latter finding, despite the fairly limited supervised contact Z has been able to enjoy with F since the inception of these proceedings.



195. It is necessary to set out in some detail Dr. Lam's conclusions contained in her report. Dr.

Lam highlighted that:

"The report is a balance between the presented facts and possible risk of abuse, the concern of what the child has said, what others have observed, and other facts, established on the balance of probabilities, as well as the parents' relationship with the child."

The conclusions at the time of the report were arrived at having regard to the following factors and the information then available to Dr. Lam:

- Z's environment and the relationship between the parents;
- The nature of the allegation: who, detail, period of allegation;
- The parent and child relationship; and
- Z's internal world.

196. Dr. Lam, when considering Z's environment, observes that children who do not feel safe in their environment or protected by their current caregivers are unlikely to make disclosure about the abuse being inflicted upon them. Dr Lam is of the view that Z has a protective network in place and due to her personality has avenues to express herself. Dr. Lam felt that Z is supported by her parents and by F's wife. Dr. Lam found that the parent-child relationship indicates that both parents have a "warm and positive" relationship with Z and that Z has a good relationship with her teachers and fellow students at the school. Dr. Lam reported that Z was not exhibiting any difficulties with transition at school, as well as any problem with separation from either parent in the school environment. Z was observed as being overly mature and independent in that environment, although regressive behaviour and anxiety was observed, in particular with



M. Dr. Lam highlighted that Z has also been in a nine-month therapeutic relationship with Dr. Brown and been treated for a few years by Dr. Watkin and that during that time:

"No direct disclosure was made to date in this protected relationship or environment and no communication is indicative of sexual abuse, apart from the allegations made by mother."

197. Dr. Lam, when considering the nature of the allegation was conscious that at the time the allegations of sexual abuse, largely generated from M, had persisted for over nine months. Dr. Lam had regard to the safeguarding concerns expressed by Dr. Watkin flowing from the nature of Z's medical complaints, and due to her interaction with Z. Again, Dr. Lam also had regard to Dr. Brown's safeguarding concerns which were based on that doctor's observations as well as information provided to her by M. However, she was also conscious that professionals from MASH who had considered the safeguarding interests felt that there was no need to "escalate to an investigation level". When reviewing the allegations, Dr. Lam noted that one might expect a child of this age to respond to the open ended questions from these professionals and that despite the passage of time since the allegation arose:

"No statement or concern from (Z) directly indicate sexual abuse, including inappropriate sexual behaviour and sexual knowledge, developmental regressive behaviours across the child's environment, self – destructive behaviour, eating disorder, risk behaviour, trauma drawing/play."

198. Dr Lam found that:

"Interaction in play and Projective drawings were age appropriate, showed no sign of any type of abuse or emotional distress."



199. Dr. Lam, when considering Z's internal world commented that:

"(Z) shows no developmental issues including language development, motor coordination, learning and interpersonal relationships. In school and a clinical setting, (Z) appeared mature with no issues with transition, changes, demands, or emotional regulation. She seems carefree and more childlike in school playground, around her peers and father."

200. Importantly Dr. Lam found that:

"(Z) shows signs of being hypervigilant to conflict and avoidance/resistance of engagement, emotional expression and certain topics."

The following observation is important and requires being fully set out. It highlights a real concern in this case arising out of the type of suggestive questioning Z has had to endure as well as the intrusive procedures and unusually large number of professionals she has had to meet. Dr. Lam notes:

"Her resistance/avoidance can be understood within the context of her internal world and parent-child interaction (discussed in later section). Of note, this assessor is one of multiple professionals to see the child in last nine months including psychologists, medical examinations, welfare interviews, and social worker interview, a police station visit. It would not be surprising if (Z) was reluctant to speak or play openly and were fearful of saying or doing anything that may get either of her parents into 'trouble'. The length of this dispute and the parental conflict resulting from the separation and custody should also be taken into account.

During this assessment there was no indication of parental alienation, but (Z) was very cautious on what to lead on. Her play and drawing indicated a deliberate exclusion of people - getting everyone out of the dollhouse and no family members in the Kinetic Family Drawing.



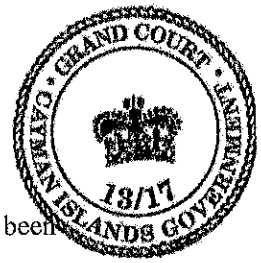
Avoidance and reluctance to share with the assessor can also be understood as an indicative of a child working through difficult/frightening experiences; for (Z) this seems to be linked to her family, emotions, and the topic of safety and body. According to the chronology and reports, the topic of physical health and safety seemed to have led to potentially unpleasant experiences such as medical visits with potentially intrusive procedures, meeting with strangers and being questioned on the content of her conversation that reportedly took place with her mother. All of this can be confusing in nature to a 6 year old (given that no evidence of abuse has been found and no medical explanation provided to her discomfort of her private parts). (Z) may have formed an impression that imply her physical health is related to places not being safe. Topics of private parts and safety may have been enforced by an adult/adults around her, thus Z's response 'ask mummy' and immediately wanting to leave when this topic was introduced³⁷, as a way to avoid unpleasant events. This may also explain her heightened sense of anxiety and need to avoid.

Both the TSCYC and BASC-3 show some concerns in avoidance, anxiety, somatic symptoms, and atypicality; this is a common profile of child who is stressed and/or has attachment rupture/difficulties. Children with insecure attachment to their caregivers may also score higher on the scale of dissociation, even in the absence of traumatic events. Hence work is needed to protect (Z) from further stress and attachment rupture.

Anxiety responses manifest from attachment difficulties can be understood from the rupture of separation or sudden disruption to contact with her significant care giver, prolonged custody battle, intrusive investigation of the family dynamic, intrusive medical procedures, prolonged exposure to family tension and difficulties, as well as rupture in parent-child relationship."

201. Dr. Lam made a number of recommendations in her report. Interestingly, in light of her conclusion that her assessment does not support any allegations that sexual abuse has

³⁷ During the session with Z when Dr. Lam introduced topics relating to family, feeling, or instructed tasks Dr. Lam had asked Z about what hurt and safe means and Z replied "ask mummy". When Dr. Lam pressed for more questions related to the topic of safety, Z asked to leave the room.



occurred, the recommendations focus on the need to address the damage that has been caused by the fallout following from the allegations and the resultant damage to the dynamics of the family. Her recommendations are important when considering what s.10 Orders should be made, as well as what any supportive network might comprise. Dr. Lam recommended that:

"Intervention should be prioritized to prevent further rupture of family splitting and emotional turmoil. (Z's) scores on the TCYC and BASC-3 reflect the typical profile of a child with attachment difficulties and she remains at risk of developing attachment difficulties if family dynamics remain the same.

*The immediate need to be addressed for (Z) is **safety** and **stability**; although DCFS has concluded that there is no concern of a safeguarding issue and this assessment did not indicate concerns of abuse. However, disclosure is not a one off statement, any disclosure and concerns for a child's welfare ought to be treated seriously and thoroughly investigated. The child's physical health and emotional health should be treated with equal weight. A long term plan for custody and living arrangements should be the priority; with a focus on consistent 'good enough' parenting which meets (Z's) needs as identified in this assessment.*

*Once stability is established then the work of therapeutic **attachment repair** is recommended. (Z) and her parents would benefit intervention to prevent the development of an attachment difficulty and to repair the attachment damage which may have been caused by the parental conflict, allegations and the investigative processes which (Z) has been subjected to.*

This family would benefit from increasing the amount of nurture and structure in their interactions. Parents are apprehensive about providing nurture as well as placing challenge with (Z), while they both provide too much choice (open ended and wordy questions) and limited leadership. Parents would benefit from avoiding overly wordy and lengthy questions. At present it may be very difficult for (Z) to accept any challenge or structure until the other dimensions have been addressed.



When parents have their own unresolved issues they can be blocked from being able to provide the care their child needs; attachment-based therapy such as Theraplay© is not recommended until such time that parents are able to provide safe, responsive care including placing the child's needs before their own. Once parental stability is established attachment-based parent-child therapy may be considered. Parents with serious mental health problems or personality disorders need to be screened for suitability for this kind of therapy as they often have difficulty seeing their child's point of view, and may cause further harm during the course of treatment.

Finally, this family are likely to benefit from systemic family therapy, a therapeutic intervention which uses family relationships and dynamics to address psychological issues. Our sense of who we are and our sense of wellbeing are intimately associated with our relationships – both to other people and to the contexts in which we live. When relationships do not give us what we need, we lose our sense of comfort and confidence about the person that we are. Relationship problems are usually best treated by meeting with those in the relationships. Often that means working with the couple / all members of the family or the household together.....” [My emphasis]

202. After the release of Dr. Lam's report, relying upon the conclusions and recommendations therein, F's attorney wrote to M's attorney requesting the removal of the requirement for contact to be supervised. Prior to this matter coming back before the Court on 21 November 2019, no reply to that request was provided to F's attorney.
203. On 13 November 2019, the Court concerned about the lack of progress in the matter, listed it for a mention hearing on 20 November 2019. Upon being informed that the assessment had been completed, the Court requested a copy of the same. Dr. Lam's report was filed with the Court on 14 November 2019. On 19 November, in an email, Dr. Lam indicated that her dates to avoid for any hearing were 5-9 December 2019 and that if



the videos of the sessions were to be released to the parties pursuant to M's request, then they should only be used appropriately.

Background – Disclosures by Z to Dr. Brown Post the Circulation of Dr. Lam's Assessment Report and Resultant DCFS/MASH Involvement

204. Due to disclosure that Z had made to Dr. Brown, which Dr. Brown had understandably referred to MASH on 13 and 19 November 2019, the 20 November 2019 mention hearing was adjourned until the following day. Dr. Brown's notes of 12 November 2019 record that at the beginning of the session M indicated that Z had been sick over the weekend and added that Z had talked to F on FaceTime. Z then turned around, frowned and said:

"I do not like it when daddy talks about dead animals."

When she was asked about that she said that they sometimes see dead animals and that she gets very upset when F talks about these things. Z then began to cry and asked M to hug her. After a few minutes M left. Dr. Brown and Z had a discussion about animals getting scared and Z mentioned that her dog often gets scared. When Z was asked why the dog gets scared she said that the dog got scared of *"the same things I am scared of"*. Z was then asked what she scared of she hid her face in the chair and said:

"Daddy does something unsafe to my privates."

When she was asked for more information she turned back to her drawing and began crying and then asked for a hug from M. It is not clear from the notes at what stage M had come back into the room. Dr. Brown said that there was then a light-hearted discussion until M left the room again. Dr. Brown's notes record her thanking Z for



discussing her feelings and asked if there is anything more to talk about concerning what she had said earlier. Z said initially no, but then added:

"My private parts got red when I went home because my dad was unsafe."

Dr. Brown replied: "Okay." She said that Z then said:

"He uses hand when (F's wife) is not around."

Dr. Brown then again thanked Z and told her the other professionals might ask her about this to which Z said:

"I did share it with Ms. Carol and she did not do anything."

Then Z said she did not want to talk any longer and she focused on drawing pictures.

205. In the session on 18 November 2019 Dr. Brown and Z engaged in a game which involved landing on different spaces, and differently coloured spaces had topics of conversation. So when Z landed on the space indicated scared she said:

"I am scared to be alone with my daddy."

She was then asked why, but said that she did not want to talk about it, and the session shifted through additional games.

206. Mrs. Robinson states that after the referral Police Officer Lisa Parrs and Social Worker Kai Matthews went to see Z at her school. She stated that Z refused to speak with them and told them that they had lied in Court. I recall that Z told Dr. Brown that she had told the Social Workers about F's unsafe touching and that they had done nothing about it.



Eventually, after M had spoken to her, Z did speak with them. One of the concerns that arise from what Z said is the question of how a child would know what had been said in Court. It heightens the concern about coaching and inappropriately involving and informing the child about ongoing proceedings. When highlighting this, I also have regard to the fact that M readily accepted in her oral evidence that on another occasion she told Z about the Court proceedings and about (i) what was being discussed, (ii) about what each parent's position was in relation to that, and (iii) the DCFS. The relevant part of the hearing is as follows:

"M: Contact was to be resumed. And again a rosy picture was painted, she was excited that she would attend. Contact then resumed. When I was attending court in July, (Z) was asking me where I was going. I did tell her that I was going to Court and I told her that it is a place where when two people who don't agree go and they present their evidence... and that mom thinks there is a mystery to be solved and daddy doesn't think so.

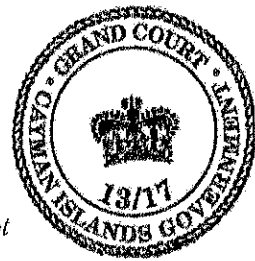
Judge: Sorry, you told her that?

M: Yeah. Back in January I had made mention and referring as to the mystery as to how her private parts were red and we did the allergy test to see if that was what it as causing the problem.

Judge: Who's we?

M: (Z) and I. It's when the games came out and I referenced court that Daddy doesn't think there is a mystery to be solved and Mommy does think there is. So I told her that we (dad and I)... when people don't agree we have to present our clues and someone has to make a decision.

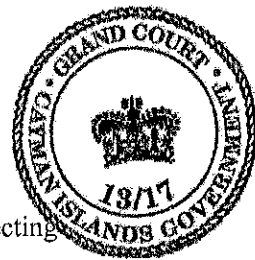
When contact resumed she didn't handle it well. I kept being asked about what I am telling her about not seeing her dad. She has never asked to see her dad but has asked why she has to see her dad. And I said I'm sorry that my words are not enough. I said that Carol said that you were afraid of the dark and she asked if DCFS hated her (the ladies she met with for the interview on the 21 June). I said that children are meant to be loved and if anyone doesn't love a child then they



are wrong. We continued to think about it and we both cried as my words are not enough."

Background – From the Adjourned 19 November 2019 hearing and the Further Assessment by Dr. Lam

207. On 19 November 2019, after the hearing had been adjourned F's Counsel wrote to Dr. Lam to share my request that she be asked whether she would be willing to speak to Dr. Brown and whether she felt a further meeting between her and Z would be useful with a follow-up addendum report. Dr Lam replied that she assumed that safeguarding procedures were being followed and that a full investigation was going to occur. She felt that it would not be proper for her to intervene until the investigation was over, although she did highlight that her opinions may change when new information emerges, so she would appreciate the opportunity to review her findings if the Court felt that necessary.
208. At the hearing held on 21 November 2019, I adjourned the matter to 5 December 2019. The Court was informed that the parties had agreed to interim and Christmas supervised contact arrangements and that an order would be submitted. Regrettably, after leaving Court, it became apparent that the parties could not actually reach an agreement on the terms of the order.
209. When the matter came before me on 5 December 2019, Mrs. Robinson indicated that a further referral had been made, this time on 22 November 2019 from Z's school to MASH concerning something that happened on the previous day. Mrs. Robinson read out the report, which had been written by the mandatory reporter at the school. The school



reported that the school supervisor was told by Z that her mother would be late collecting her and when she was asked why that was she responded saying:

"Because she is in Court fighting my dad."

It was then recorded that the supervisor immediately replied *"oh no, why?"* to which Z replied in a sad manner *"because he hurts me in an unsafe way"*. After saying that Z ran away to play.

210. The Court was told that Police Officer Lisa Parrs and Social Worker Kai Matthews followed this up by meeting Z at her school on 27 and 29 November 2019 and on 5 December 2019. Mrs. Robinson says that although a rapport had been built up Z stated that she did not want to talk about it. The police decided that they were going to close the case as Z had not disclosed anything to them and they felt that it did not warrant an ABE interview.

211. An application was then made at the hearing by F for contact to be unsupervised. I stated that I would be minded to remove the requirement for supervision at that time, unless Dr. Lam indicated that the supervision should continue. With that in mind, the parties were directed to consult with Dr. Lam before any unsupervised contact could take place. There was a dispute about the Christmas contact, and the Court granted leave to M to remove Z from the jurisdiction between 27 December 2019 and 7 January 2020.

212. As the investigation was over, I directed that the parties should send a joint letter to Dr. Lam to seek her comment about whether any of the recent events had changed her recommendation and approach and ask her whether she wished to see Z again. I



highlighted my concern about the potential emotional harm to Z if these further allegations of abuse were found to be made without any basis, especially if Z had been coached by M resulting in the comments being made. With that in mind, I indicated that I invited Dr. Lam to elaborate in greater detail on the potential emotional harm that Z might suffer if she has been coached and if M is seeking to alienate the father. I indicated that I would like to know Dr. Lam's view about what bearing that may have on the decision about which parent Z should live with, having in mind that there were cross-residence applications before the Court.

213. At the hearing I also gave directions about the disclosure of Dr. Lam's video recordings of the sessions. Towards the end of the hearing M's Counsel expressed concern about whether the trial fixed for five days from 20 January 2020 could remain as a fixture. The Court expressed its concern about the delay and stated that the date should be utilised if that was feasible, but directed that there be a case management hearing before then at which final directions could be given.
214. The terms of the joint letter ordered to be sent by me at the hearing on 5 December 2019 were eventually agreed by the parties on 18 December 2019. On 20 December 2019 the Court was informed that Priestleys intended to come off the record for M in early January, but were delaying the date to enable certain disclosure to be completed.
215. At the case management hearing on 10 December 2020 it became clear that the 20 January 2020 final hearing would have to be vacated. There were still issues in relation to the disclosure of the videos as well as M's request for Dr Lam's clinical note.



Significantly Dr Lam's updated views had still not been given. The final hearing was re-fixed for 23 March 2020 and comprehensive directions were given about the filing of evidence by the parties and by the experts. If required a one day interim contact hearing was fixed for 24 January. F did not seek to proceed with that interim hearing.

216. Dr. Lam's Addendum Report/Reply to the joint letter is dated 20 January 2020. Dr. Lam indicated that what had been reported to have occurred since October 2019 did not change her recommendations set out in her October 2019 report. In relation to the question about whether she wished to see Z again, she stated that:

"Balancing against the risk of over interviewing and continuous posing questions that can be potentially of a confusing nature to a six old" she did not at that point seek to do so.

When giving that answer Dr. Lam had in mind that three interviews had taken place at the school at which open ended questions and report was established, and that no information been received that led MASH to close the case as it did not need to continue any further investigation. Dr. Lam also had in mind, Dr Brown's explanation that Z was showing signs of avoidance during sessions and her view that she did not see the value in interviewing again because in her view Z likely to only open up to some people.

217. In relation to the question about there being a potential of emotional harm to Z, Dr. Lam opined that children caught in the high tension custody battles often experience emotional distress. She added *"They may feel the need to please both parents but yet are stuck in the dilemma of the battle."* Dr. Lam referred back to her concerns in her October report, where she had outlined the risk of potential attachment difficulties if the family dynamics



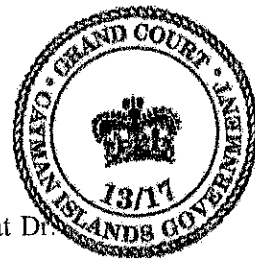
did not change. She felt that risk still remained and therefore the family needed to establish a long term custody plan when they could begin to experience stability.

218. In relation to the question about what bearing emotional harm may have where Z should live, Dr. Lam referred back to her October report, where she had stated that:

"...both parents 'provide 'good enough' parenting have a warm and close bond with (Z). According to the observed relationship between (Z) and each parent at the time of the assessment, there is no concern regarding the individual parent's capacity, but the endured parental dynamic struggles and tension of the custody battle continue to pose potential emotional distress to (Z)."

219. In relation to the issue of removing the need for supervision of contact Dr. Lam noted that the Court should consider any feedback from the supervisor regarding the visits that may indicate concern. She felt that if no concerns existed, the Court should consider the balance between the probability of unacceptable risk to Z against Z having a meaningful relationship with F.

220. Dr. Lam filed a Further Addendum Report dated 4 February 2020, the purpose of which was to support her responses in the previous Addendum and to consider any additional concerns raised by professionals that were not covered therein. She noted the informative phone discussion that she had had with DI Ashworth on 13 January 2020, which concisely summarised the position of MASH and how that had been reached. From the evidence given and the emails on file, DI Ashworth seems to be someone who M felt able to approach and who had built up some form of rapport with her. Due to the criticism



from M about MASH and DCFS there is value in setting the same out herein what Dr.

Lam noted:

"(DI Ashworth) illustrated a chronology of the multi-agency involvement including police and social services since January 2019. He described the process of the case being presented in the multi-agency meeting and discussed, and how the decisions were made based on the presented information and opinions from professionals in multiple agencies. The presented information includes observation from social workers (Ms. Carol and Ms. Kai), safeguarding reports received by MASH, an assessment performed by the social worker, and input from MASH manager (Ms. Tiffany). The recent investigation report completed by the investigation officer- Lisa Parr, police officer, Kai, social worker, and the child protection officer from the school was also presented as part of the investigation. So far, no evidence has called for a criminal investigation of child abuse. FSU advise that that they have noted a pattern of the timing of reports coming in against upcoming court hearing dates. The FSU team reportedly continue to treat each disclosure seriously and conduct thorough investigations. However, FSU expressed concerns regarding potential leading questions that shared by (M) in emails to Mr. Kevin."

221. In the Addendum, Dr. Lam noted the recommendation of Mrs. Robinson that Z should be placed with F and that there should be a supervised contact order with M. Dr. Lam noted that Mrs. Robinson's and MASH's concerns were summarised as being (i) the emotional impact on Z through the process of investigation, (ii) the impact on Z's relationship with her parents, (iii) the pattern of reporting made close to upcoming Court dates and safeguarding reports, and (iv) the impact of potential leading questions from M to Z.

222. In her balanced way, Dr. Lam also had in mind the longevity of Dr. Brown's treatment of Z, and of her findings. She noted that Dr. Brown explained that Z's presentation



continued in a similar manner, namely avoidance of certain topics and "giddy when anxious". She recalled that Dr. Brown had reported separate safeguarding concerns that involved disclosure from Z in November 2019, but that no more disclosures had been made since.

223. With the above factors in mind, based on the information available to Dr. Lam at that time she summarised her clinical impression as follows:

"The child protection officers involved in the case, including police and social services, found no evidence to indicate child maltreatment as of this date. (M) and Dr. Brown continued to express concerns of safeguarding issues. The disclosure report by Dr. Brown and in the school report mentioned 'unsafe touch' and limited information was provided regarding the nature of the disclosure. A disclosure from children ought to be treated as a process that unfolds over time in different contexts and not as a singular event. A reliable disclosure develops an interplay between the child signs and expressions and the reactions of the adults around them, both verbal and non-verbal (Marchant & Turner). The main concern here may be with treating a false allegation as true because it can be traumatising to the non-abused child or treating true allegations as false. We need to consider the nature of the allegations and the possibility that a child may come to believe that they have been abused because this is what important adults in their lives tell them. Consideration must be given to interpretation of what the child has said, as well as the duration that the alleged abuse has been ongoing. The repetition may be of a child's belief, rather than of events that they reliably recall. Hence it is important that each disclosure is investigated and treated seriously, for example guidelines of using the 'Open doors' framework to manage disclosure is one of the recognised practice frameworks. In regard to the process of investigation, the guidelines in achieving best evidence (2001, 2014) outline the best practice when interviewing children." [My emphasis]

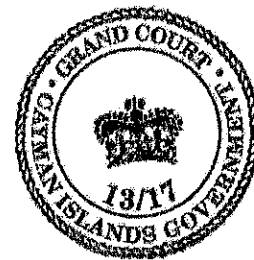


Background – Status of the Material Emanating from Dr. Brown

224. At the case management hearings held in early January 2020, the Court was still indicating that, if M sought to rely upon the material from Dr. Brown, then she should secure her attendance at the hearing. M wrote to Higgs & Johnson by email on 20 January 2020, this being when she had just started to represent herself because Priestleys, her latest attorneys, had just come off the record. She informed Higgs & Johnson that the Court had confirmed that it was permitting the parties to admit their affidavit evidence by 31 January 2020 and that this could include affidavits from treating professionals with expertise who may be able to help clarify the facts of the case. In light of that confirmation, M asked Dr. Brown to provide an affidavit by 31 January 2020 in which she should address a number of specific matters which M listed in her email. M was also asking if Dr. Brown would attend the hearing and M was seeking her dates to avoid. M also asked Dr. Bodden, M's Psychologist, whether she was willing to submit an affidavit by the same date in which she should comment upon any interactions or observations she had of Z from 30 May 2019 and upon anything else that the doctor felt was relevant.

225. Upon receipt of that request, Higgs & Johnson wrote to F's attorneys and to the Guardian, copying in M, to seek clarification about the directions given by the Court as they felt it may impact on any affidavits that Dr. Bodden and Dr. Brown may prepare in response to M's request. F's attorneys accurately represented in reply that my direction was simply for the parties to prepare updated affidavits by 31 January 2020. They added that:

"In terms of your client, this can be in the form of a report exhibited to an affidavit, or an affidavit. This was discussed in court. As you will obviously be aware, your client may be subject to cross examination."



Higgs & Johnson then replied seeking confirmation as to whether there was any direction that their client should or may file an affidavit, and if there was, what were the issues or evidence that it should address. Higgs & Johnson also enquired whether any order had been made as regards payment of their client's costs of providing such evidence. F's attorneys replied that no such directions had been given. The attorneys seem not to recognise that these are private law child proceedings and that Dr. Brown was not the Court's witness or a witness instructed by DCFS, but someone upon whom M sought to rely.

226. Rather unhelpfully, it became apparent that Dr. Brown did not intend to provide any affidavit evidence. In a letter from F's attorneys to Higgs & Johnson they wrote on 12 February 2020:

"(M) has informed us that your client does not intend to provide affidavit evidence. We infer therefrom that she does not intend to give oral evidence either. For the avoidance of doubt, your client's statement to my client (as recorded in her notes) that this writer requested a letter of 6th June 2019 ("the Letter") is wholly incorrect. This misstatement has had to be corrected on a number of occasions in court. What was asked for by way of our letter of 4th June 2019 was a copy of (Z's) records, not a treatment summary of your client's recommendations. In these circumstances where the Letter was not requested, nor is your client willing to attend court for cross examination in respect of the contents thereof, please confirm that it is withdrawn."

227. On 20 May 2020 the Guardian, to assist M, wrote to Dr. Brown (copying in Higgs & Johnson) to remind her that the final hearing in this matter was due to take place the following week. He informed her that M continued to wish to rely on her reports/notes



and that M had expressed that she would still like to call her as a witness. The Guardian pointed out that the Court had expressed a view that treating professionals in the Cayman Islands are subject to local laws, practice standards and codes of ethics applicable to the Cayman Islands regardless of whether that person had practised or qualified in another jurisdiction. The Guardian also pointed out that Dr. Brown had a duty of care to Z as a treating professional and that normally such professionals in children cases of this nature actively seek to attend Court to assist in any way they can without a subpoena or order from the Court. He highlighted that the Court had stressed that it felt it important to hear from Dr. Brown in this matter, given her involvement with Z and M's desire to rely upon her views. The Guardian made it clear that the Court was content for Dr. Brown to attend the hearing by Zoom and he requested her to urgently confirm if should be willing to attend.

228. Higgs & Johnson replied that Dr. Brown was no longer employed by OnCourse and that she had left the jurisdiction. They stated that they no longer represented her, but had:

"forwarded your email to her and she has advised me that she does not wish to testify in Court."

The position taken by Dr. Brown is most regrettable, especially if she recognised Z's interest should be paramount in light of the concerns that she seems to have expressed. She was no longer Z's treating psychologist, so there could be no suggestion that her giving evidence may be awkward or have a detrimental effect on the ongoing treatment. Dr. Brown's apparent reluctance to give evidence on oath is not consistent with what Dr. Lam feels is the "duty" of a medical practitioner practicing in the Cayman Islands in a case such as this, especially if they are expressing safeguarding concerns.



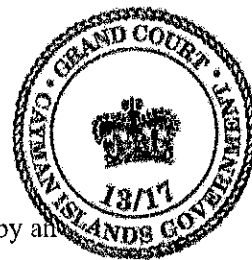
229. In addition, it would also have been in Dr. Brown's interests to attend as she was aware that F was going to raise criticisms about her appointment, involvement with Z and the materials she had produced. Unfortunately, I have not had the opportunity to hear from Dr. Brown and when considering the criticisms made by F about her I am conscious that she may have been able to meet some or all of them if she had been in attendance.

230. I note that by 12 March 2020 an issue had developed in relation to matters raised in communications by M towards Dr. Brown. The issues between them had grown to such extent that Higgs & Johnson wrote back to M on the same day stating:

"I note your repeated reference to my client's compliance with the APA code of conduct. Firstly, the relevant code to which practitioners in the Cayman Islands must adhere is that of the Council for Professions Allied with Medicine ('CPAM'). Secondly, your repeated questioning of my client's compliance with her professional obligations is unwarranted, discourteous and inappropriate. If you consider there is any basis for such an allegation, then it should be formally notified as such, not used as a negotiating tactic. Finally, would you please refrain from copying my client correspondence. Any communication should be addressed to me and I will take instructions on them, as appropriate."

It does appear that Dr. Brown was concerned about certain matters been raised by M in relation to her conduct and professionalism as well as about things that she was saying to the Guardian. I am unable to say whether this was one of the reasons why Dr. Brown did not respond positively to the Guardian's email about her attendance at this hearing.

231. When I review Dr. Brown's evidence, its value is that it highlights concerns (whether some were properly reached or not and whether some were based upon overreliance upon



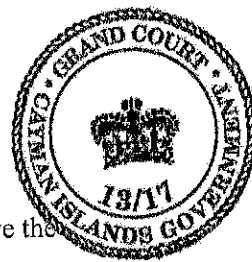
what M had told her), that required, as she rightly recommended, a full assessment by an experienced psychologist, namely Dr. Lam. The evidence from Dr. Watkin, who frequently reminded the Court that she was not an expert in child sexual abuse, again rightly required careful review. Neither Dr. Watkin nor Dr. Brown were conclusively stating that child sexual abuse had occurred, but from their experience they had real concerns that Z may be at risk and they recommended that an assessment of the type done by Dr. Lam was necessary to address such a concern. As Dr. Brown indicated at the end of her Written Summary, the findings made by Dr. Lam should:

“inform the goals and directions of treatment and that these findings be used to inform the goals and direction of treatment.”

Dr. Brown’s indication applies to treatment whether or not the assessment disclosed a finding by Dr. Lam that there was sexual abuse or emotional harm. I agree that Dr. Lam’s findings should be utilised in the manner suggested by Dr. Brown.

232. I share Dr. Lam’s concern that Dr. Watkin and to a greater extent Dr. Brown had reached a premature and imbalanced decision that Z had likely suffered trauma at the hand of F. As consequence, from an early point Dr. Brown tailored her treatment to address such a concern rather than being open to explore whether there were any other potential sources for any issues Z was experiencing. The latter included a failure to be willing to consider whether Z may be at risk of suffering emotional harm because of M’s actions and questioning of Z.

233. Before I move away from Dr. Brown, F has leveled a great deal of criticism at Dr. Brown for treating Z without his consent. To be clear, Dr. Brown has not broken any law or



regulations by doing so. With a child of Z's age, a psychologist must have either have the consent of parents or someone with parental responsibility. A healthcare professional only needs one person with parental responsibility to give consent for her to provide treatment, however, if the other parent actively does not want the child to have therapy the psychologist should consider the appropriateness of offering direct work with/to the child. It is good practice the psychologist to give this some consideration at the first contact or initial consultation, especially if the referral is not being made by the DCFS but by only one of the parents with parental responsibility.

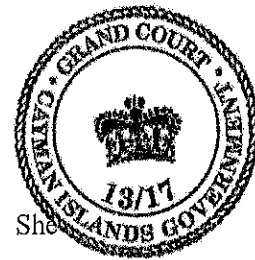
Background – Welfare Officer's Report Filed on 21 February 2020

234. Mrs. Robinson filed a report on 21 February 2020. Unfortunately, M was not co-operative with that part of the assessment process. M had indicated to Mrs. Robinson that she was not available on the dates and times which had been suggested by the Social Worker. On 22 January 2020 she indicated that she would make contact with Mrs. Robinson, but failed to do so. The report was completed on 14 February 2020 and therefore M's conduct meant that updated input from her could not be included in the report.
235. F and his wife, on the other hand, did accommodate Mrs. Robinson and they shared their recent experiences about contact. They were concerned that, although the contact was for limited periods of time, only 11 hours per week, M frequently disrupted the sessions by phoning several times and asking questions, for example about whether the wife and/or dog were present. F noted his concern that in recent times Z represented as guarded and felt she had to ensure that F's wife was in the room. This had affected enjoyment of



contact and hampered some of the games as Z *"is on guard"*. Although not in the report Z has also indicated that she is not allowed to let F come into the bathroom when she is using it.

236. A concern was also expressed that M was still trying to dictate what would happen during F's contact visits without consulting with them. An example was given that Z was brought to contact having been wrongly told by M that she would be going bowling, resulting in her having a dashed expectation when F said that was not what was planned. They were also concerned that M would turn up at the golf or gymnastics which took place during F's contact periods. They noted that, when M was at these activities, Z would be distracted and start to cling to M. However, when M left Z would promptly be back to being normal and settled.
237. This is illustrative of M still seeking to have some control over contact and F's interaction with Z. Of course, parents can attend extracurricular activities by consent, but they should not force attendance, if the other parent does not agree with that attendance during their contact session. Also, although it may be appropriate to telephone on one occasion on a contact day for an update as to how the child is, there is no need for additional phoning or for unduly inquisitive questioning. F and his wife have expressed a concern that more recently handovers at collection for contact are made more difficult by M encouraging Z to give her several hugs at the parting moment which may make M feel happier, but encourages a separation anxiety in Z, which fortunately promptly disappears after M has left.

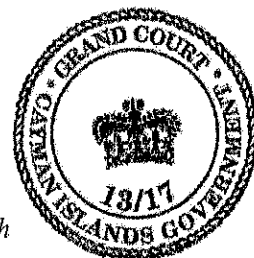


238. In her report, Mrs. Robinson appropriately reviewed the Welfare Checklist. She concluded that Z's emotional and mental health is at risk if she remained with M being her primary carer and that if nothing is done then DCFS would have failed in its duty to protect her.

239. Mrs. Robinson noted that five referrals were received by MASH, including a number of emails from Dr. Watkin and Dr. Brown. The Police having reviewed the matter at various stages, including after interview with Z found that there was no case for them to pursue. The position is consistent with Dr. Lam's conclusion that there was no evidence in the assessment supporting a finding that there had been sexual abuse. Mrs. Robinson highlighted the concerns (i) about the difficulties that the professionals had experienced when trying to arrange interviewing of Z, (ii) about the intrusive collecting of evidence from Z, (iii) about M's inappropriate questioning of Z and attempted coaching, and (iv) about M's preoccupation with the investigation with her constant reporting to a number of agencies in a bid to "*legitimize her claims*". Mrs. Robinson writes that the continual "*baseless*" reporting by M establishes a real concern that M will not stop her efforts to prove her belief that Z has been sexually abused by F. Mrs. Robinson is rightly concerned by the more recent changes in Z's personality and in the guarded manner Z now feels compelled to adopt during some contact visits, which are due to M's influence over Z.

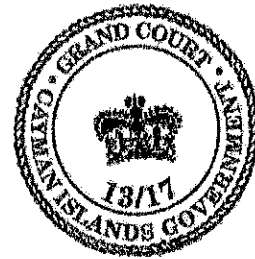
240. Mrs. Robinson recommended in the report that there should be a change of residence in favour of because then it would be:

"highly likely (Z) would revert to her previous carefree and fun loving attitude. She would no longer have to worry about her parents fighting court or carry the burden of her mother's expectations. She would then be free to have a normal



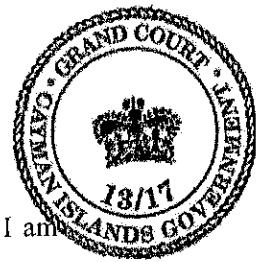
parental relationship with her father and return to playing and having fun with him."

In the report she did not make a recommendation for supervised contact for M, but simply contact to be agreed.



Criticisms Made by M in Relation to Mrs. Robinson and DCFS

241. Throughout these proceedings M has been heavily critical of the actions and involvement of Mrs. Robinson and DCFS "*as a whole*". As a consequence, she cross-examined Mrs. Robinson for almost three days. This was one of the parts of the hearing where the Court, recognising that it was important for M as a litigant in person to feel that she had been given the opportunity to explore wide ranging grievances which she believed went to the root of her case, allowed her greater leeway and time than it ordinarily would permit to enable her to do so.
242. M submitted that DCFS formed a view that she was lying from the outset and have failed to be impartial, have failed to carry out a proper investigation, have not followed best practice, have reported inaccurately and selectively, have stepped out of their areas of expertise, have acted upon speculation rather than based on evidence, have acted obstructively and providing misleading information to the Court, to the police and to Dr. Lam. I have carefully reviewed all of the criticisms which M elaborates on at pages 5-8 in her Written Closing Submissions. In light of M's vigorously expressed concerns, I remind myself that the Court, when reviewing the potentially important evidence of Welfare Officers which may provide valuable background information to the Court and recommendations, must always analyse them carefully and with an open mind as it does all of the other evidence. Following my review, I do not accept the submissions made on behalf of M that the recommendations and conclusions given by Mrs. Robinson are flawed and should be disregarded.

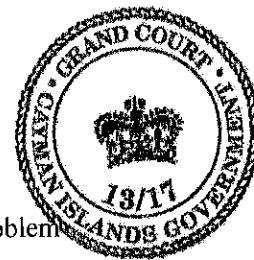


243. Although there had been a breakdown in communication between DCFS and M, I am afraid that a significant part of the reasons for that arises from M's conduct and her lack of engagement with important parts of Mrs. Robinsons' assessment. As illustrated by M's interaction with other professionals, if that professional does not agree with the beliefs held by M then M strongly criticises not only their professionalism but also their motives. This is graphically illustrated by the serious criticisms she has made in relation to Dr. Lam, including an unfounded statement that this Child Psychologist, whom she and her attorneys had so forcefully demanded be appointed as the single joint expert, had acted unethically. If the professional supports her position then M is fully cooperative and engages with their assessment.

244. I accept that these proceedings have affected M emotionally and that her resultant demeanour and actions may be a consequence of that. There could have been more sensitivity in the communications from DCFS with M when she raised her concerns about the investigatory procedures. Also there should have been some recognition by DCFS that M's adherence to a belief that Z been sexually abused was bolstered by the support that M felt she was being given in holding such a view by Dr. Brown. Prior to the involvement and conclusions of Dr. Lam it is understandable that a parent may hold on to a belief that sexual abuse has occurred if that parent genuinely feels that a child's treating Psychologist is airing a similar concern. In a situation such as exists in this case where a parent retains such a belief even after findings are made by the joint expert and by the Court after a hearing, a concern is whether that person will then have the insight to be able to change their mind and vary their behaviour towards the other parent and the child.



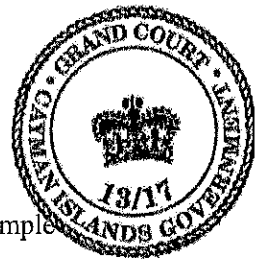
245. There is no evidence to justify a claim that Mrs. Robinson has been biased or that her conclusions are not based on a valid factual foundation. M criticises Mrs. Robinson's consistent finding in her assessment from early 2019 that this is not a case where there is evidence of sexual abuse. However, it is important to note that no safeguarding professional, be they a doctor, psychologists, school teacher, police officer or social worker has stated that sexual abuse has occurred. Mrs. Robinson recognised that Dr. Brown felt there to be a need for a thorough trauma assessment from an expert in the field of child sexual abuse and she also contacted Dr. Lam about this "*anonymous case*" before her appointment. A number of Mrs. Robinsons' conclusions in her assessments about the nature and timing of M's allegations, M's conduct, M's coaching of Z are consistent with my findings and in fact show her insight from an early stage. It is an unfair criticism that M makes about the lack of her and Z's input in the final Welfare Report. Mrs. Robinson had tried to set up appointments but M was uncooperative with the assessment process by not making herself and Z available and by her questions about the nature of any meeting inferring that if there were to any meeting it be on her terms.
246. The criticisms made by M about Mrs. Robinson's records or note taking have some merit. Her notes were usually in the form of a summary and, especially on point such as things which a parent or child is saying, the note should be a timely record what is actually said, and not be the writer's summary of what he/she believed had been. The Guardian when cross-examined by M, quite fairly acknowledged that Social Workers are "*under a lot of burden*" and they may not include certain things in their reports, but that does not mean that the reports have no value. To her credit, Mrs. Robinson recognised that this is an area



where there needs to be improvement, although she did indicate that a part of the problem is a lack of time and staff shortages.

247. M has expressed a concern about the lack of police involvement and the interview techniques involved. Mrs. Robinson is an experienced Social Worker and MASH team member. A decision was taken by MASH from an early stage that this was not a matter that required a full criminal investigation and that DCFS would assess as a sole agency. The safeguarding professionals decided that Mrs. Robinson should be the one to conduct an assessment as a member of the DCFS. It was evident that MASH were kept informed if there was any further developments that may require its review, something DI Ashton had made clear to M. It may be for that reason that M seemed to be able to open up a line of dialogue with MASH, but inappropriately often excluding Mrs. Robinson from the loop. This unfortunately, at times, caused M to interpret that there were different messages being given to her about how the allegations were being regarded and approached by the safeguarding professionals. When MASH were informed of developments, and after updated reviews, they still felt that a criminal investigation was not merited on the evidence.

248. One of the main areas of concern raised by M is the interview techniques used by DCFS. The Court was informed that that All Best Evidence Interviews ("ABE interview") are not conducted unless a child has made an allegation of abuse. The Court was informed that if there is no such disclosure from the child then the less formal interview procedures which were used in this case are adopted. The benefits of an ABE interview are seen when there is an allegation of abuse and the Court has to determine what weight may be



put on the disclosure having regard the circumstances which it was given. For example was disclosure from a child freely given or was it extracted in the manner M sought to do so when she improperly questioned Z or highlighted concerns to Z in this matter. The guidance given by McDonald J³⁸ concerning ABE interviews refers to such interviews being conducted after a child has reported that he/she has been abused. Such an interview would not be conducted at the initial stage where the professionals may carry out an initial meeting with the child to ascertain whether the more formal interview should take place. It is evident that Mrs. Robinson upon receiving the concerns of M and Dr. Watkin met with each parent separately to gain an understanding about their perspective of the family dynamics and the background. She appropriately had meetings with Z away from her parents and assessed Z in the presence of each parent. It appears that MASH were kept abreast of major developments arising in her assessment. As the Guardian mentioned during cross examination by M, Mrs. Robinson as well as the officers involved in the May/June 2019 interview have been involved in ABE interviews, so they have the requisite experience and training to understand the techniques and whether it should be used in a particular investigation/assessment.

249. In this matter, at least until November 2019, nothing that could be regarded as being a report of abuse being made by the child to a professional had been made. Although there is a written record of the interview with Z after Dr. Brown made the report of what she said she had been told, it would have been good practice for a formal ABE interview to have been held at that time. This would have been particularly important if Z had gone on to make a report of abuse during that interview. However, the decision not to conduct

³⁸ See paragraph 249 below.



such an interview in this case does not undermine the conclusions and recommendations reached by Mrs. Robinson.

250. Due to the various concerns raised in this case by M about the investigatory procedures, the opportunity now arises to provide guidance about interaction with the relevant child and about social workers' assessments in potential child sexual abuse cases. With this in mind and the lack of any such guidance to date in any judgments in the Cayman Islands, despite the unfortunate length of this judgment, I make no apology for sharing in detail herein the oft referred to important guidance provided by MacDonald J in *AS v TH (False Allegations of Abuse)* as I cannot improve on it. I accept that some the guidance relates more to cases where a child has made an allegation of abuse to a professional and in this matter no such 'disclosure' was arguably made until the exchange reported by Dr. Brown in November 2019, I still set out as follows most of what MacDonald J stated to put the assessment guidance into context as well as to assist professionals in future cases:

"(36) In the departmental advice What to do if you're worried a child is being abused (HM Government, March 2015) (replacing previous guidance published in 2006) states that before referring to children's services or the Police an attempt should be made to establish the basic facts. Within this context, the following is said at [28]:

"The signs of child abuse might not always be obvious and a child might not tell anyone what is happening to them. You should therefore question behaviours if something seems unusual and try to speak to the child, alone, if appropriate, to seek further information."

And at [29]:

"If a child reports, following a conversation you have initiated or otherwise, that they are being abused and neglected, you should listen to them, take their allegation seriously, and reassure them that you will take action to keep them safe."



(37) The statutory guidance *Achieving Best Evidence in Criminal Proceedings* (March 2011) (hereafter the ABE Guidelines) makes clear at [2.4] that the need to consider a video recorded interview in respect of the allegations may not be immediately apparent to professionals involved prior to the police being informed. Within this context the ABE Guidelines state at [2.5] that:

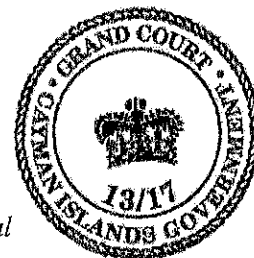
"Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal interview takes place. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present."

(38) The ABE Guidance goes on to state at [2.6] under the heading 'Initial Contact with Victims and Witnesses' that a person engaged in early discussion with an alleged victim or witness should, as far as possible, (a) listen, (b) not stop a free recall of events and (c) where it is necessary to ask questions, ask open-ended or specific closed questions rather than forced-choice, leading or multiple questions and ask no more questions than are necessary to take immediate action.

(39) Within this context, having examined the ABE guidance, in *Re S (A Child)* [2013] EWCA Civ 1254 at [16] the Court of Appeal held that, with respect to initial contact with alleged victims, discussions about the facts in issue in respect of an allegation as distinct from whether and what allegation is being made and against whom, should be rare and should not be a standard practice.

(40) Again within the foregoing context, when social workers are speaking to children who have made allegations they must be very careful to consider the purpose of the exchange and whether it is being conducted with a view to taking proceedings to protect the child or for separate therapeutic purposes where the restrictions upon prompting would not apply but the interview would not be for the purposes of court proceedings (*Re D (Child Abuse: Interviews)* [1998] 2 FLR 10). **(ii) Proper Recording**

(41) The requirement that all professionals responsible for child protection make a clear and comprehensive record of what the child says as soon as possible after it has been said and in the terms used by the child has been well established good practice for many years. The Cleveland Report makes clear at paragraph 13.11



that: "We would emphasise the importance of listening carefully to the initial presentation of information and taking careful notes".

(42) The ABE Guidance re-emphasises this statement of good practice under the heading 'Initial Contact with Victims and Witnesses' by making clear that the person speaking with the alleged victim or witness should (a) make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness), (b) make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation and (c) fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.

(43)

(44) The need for professionals working with children to record, as contemporaneously as possible, what the child has said has been recognised and endorsed by the courts as vital in circumstances where, in determining allegations of sexual abuse, it is necessary for the court to examine in detail and with particular care what the child has said (sometimes on a number of different occasions) and the circumstances in which they said it (*D v B and Others (Flawed Sexual Abuse Enquiry)* [2007] 1 FLR 1295). Within this context, it will also be important that, when recording an allegation, the child's own words are used and that those speaking with the child should avoid summarising the account in the interests of neatness or comprehensibility or recording their interpretation of the account.

(iii) Social Work Assessment

(45) Following the allegations being made in this case assessments were carried out by the London Borough of Hackney, including an investigation pursuant to s 47 of the Children Act 1989. The London Borough of Westminster and the local authority in whose area the mother and children now reside have also been involved with the children.



(46) *The Cleveland Report provides extensive guidance on proper social work practice in the context of allegations of sexual abuse. The salient points are as follows (emphasis added):*

i) *Whatever the nature of presentation, whether the response is immediate, prompt or deferred, the response should be planned and conducted with professional skill. Children's best interests are rarely served by precipitate action. Initial action in securing the widest possible information about the child's circumstances and family background is an essential pre-requisite to careful judgment and purposeful intervention"* (para 13.9);

ii) *It is necessary to assess the family by looking at the parents individually, the parents' relationship, the vulnerability of the child, the child's situation in the family, the family's social situation, their contacts with extended family etc. as well as considering and recording the family's perspective of events which set the referral in motion* (para 13.13);

iii) *The principle aim of the social worker's contact with the family at this stage should be to compile a social history, obtaining as comprehensive a picture of relationships and pattern of family life as possible. The quality of the marital relationship and parental skills should be carefully assessed* (para 13.19);

iv) *Social workers should seek a broadly based assessment of the child. An outline of the child's social development together with information about the important relationships in the child's life is vital information. Where a child is attending playgroup, childminders or school it will be helpful to record the views of those responsible for the child's day to day care* (para 13.23);

v) *Intervention should proceed as part of a planned and co-ordinated activity between agencies. Children and families should not be subject to multiple examinations and interviews simply because agencies and their staff have failed to plan their work together* (para 13.10);

vi) *The social worker will need to establish a clear understanding with the Police about how their respective roles are to be co-ordinated* (para 13.12);

vii) *Throughout the phase of the initial assessment and preliminary decision making, social workers should be conscious of the fact that the presumption that abuse has taken place can have damaging repercussions for the child and the family. Equally, an abnormally low level of alertness to the possibility of child sexual abuse may deter children from subsequently trusting adults sufficiently to reveal the fact of abuse to them* (para 13.22).

(47) *Within this context, and echoing this approach, the statutory guidance Working Together to Safeguard Children (HM Government March 2015) reiterates at [35] the principles and parameters of good assessment. These principles and parameters include the need for such assessments to be rooted in*

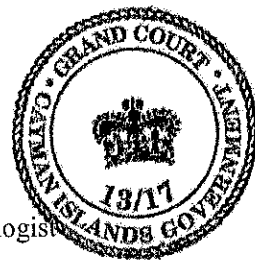


child development and informed by evidence, to involve children and families, to adopt an integrated approach, to be a continuing process and not an event and to be transparent and open to challenge. The three domains of the assessment specified at [36] should be the child's developmental needs, the parents' or carers' capacity to respond to those needs and the impact and influence of wider family, community and environmental circumstances. At [37] the guidance makes clear that the interaction of these domains requires careful investigation during the assessment and that it is important that (a) information is gathered and recorded systematically, (b) information is checked and discussed with the child and their parents/carers where appropriate, (c) differences in views about information are recorded and (d) the impact of what is happening to the child is clearly identified."

The Guardian ad Litem

251. It is unusual for a Guardian to be appointed in a private law child case. However, when it became clear that there had been a breakdown in the relationship between M and Mrs. Robinson, the Court felt that not only would it be in Z's best interest to have separate representation, but that a Guardian could also act as an independent go-between for the parents as well as the experts. The appointed Guardian, Mr. Holland, is an experienced family practitioner appearing frequently in the Family Division and one of his strengths is the sensitivity and understanding that he brings to family cases, accordingly he is well-suited to be Guardian in this case. He was able to establish a cordial rapport with M.

252. The Guardian decided to take on a more limited and "unconventional" role than some guardians as he chose not to meet with Z. This approach was adopted as he was concerned that Z had seen and was still seeing a number of different professionals. I have regard to this when considering the more limited nature of his report and the



recommendations he makes. The Guardian was aware that Z had a treating psychologist in Dr. Brown and was also being assessed by Dr. Lam. I note that the Guardian rightly reached out to both of them to make inquiries and to and to receive their views.

253. The Guardian filed a Report dated 9 March 2020 and gave evidence at the hearing. The Guardian gave his evidence last at the hearing and he confirmed that, having heard all of the evidence at the hearing and having reviewed the additional written evidence placed before the Court, the recommendations in his report remained unchanged.

254. The Guardian felt that F was:

"able to articulate his position in a clear and composed manner."

The Guardian observed that F:

"presented as being genuinely concerned about his daughter's welfare, somewhat frustrated by the court process, angered by the allegations against him and somewhat helpless to stop what is happening."

This is an accurate observation and one that I share having listened to to F's evidence and seen his demeanour throughout these lengthy proceedings. That said, despite his frustration caused by the nature of the upsetting allegations made, by the significant restrictions on his contact with Z and by the knock on delay caused by referrals made at crucial times of the proceedings, F has been commendably calm in court throughout the court process. The impression I have is that F, although understandably aggrieved by the way the proceedings were progressing as so forcefully outlined by him at the outset of his



evidence in chief, was still trying his best to be positively engage as that was in Z's best interests.

255. In relation to M, the Guardian observed that she:

"presented as being very emotional and sometimes tearful. She too was frustrated by the court process and DCFS/MASH involvement in particular."

The Guardian commented that:

"(M) was concerned that the allegations against the father have not been properly investigated" and during their meeting M "would frequently bring the discussion back to allegations of sexual abuse and various historical incidents that she now feels were indicative of years of abuse."

The Guardian then added that his concern is:

"...that having opened 'the mental door' (as mother described it) to the perceived possibility of (Z) having been sexually abused by her father, the mother does not appear able to shut that door despite the conclusions of DCFS, MASH and Dr. Lam, that (Z) is not a victim of sexual abuse..... the Mother's apparent inability to do so possesses a serious risk to (Z's) emotional welfare going forward."

256. The Guardian highlighted that of particular concern is that M makes comments to Z which appear to validate and promote Z's feelings of fear. In this regard the Guardian referenced the conversation which M informed him that she had had with Z about F and his wife's soon to be born female baby. F and his wife had delicately informed Z on a contact visit on 1 March 20120 that she would be having a new sister as they were concerned about what M would do or say to Z when she found out about the pregnancy. F stated that Z appeared to be happy and pleased and showed no anxiety or concern. M told



the Guardian that when she collected Z after that contact visit she was *"extremely alert and conversational with her"*. M said that she asked Z *"if she was sure she was ok. Is there anything that has upset you?"* The Guardian said that M told her about the baby and that Z initially stated:

"I'm happy, I get another sister" and that she went on to say *"I'm worried the same thing will happen to my sister."*

M told the Guardian that she then replied to Z by saying: *"Hopefully not, I'm sorry"*. The Guardian said that M then told her that Z was lying wide awake in bed and did not want to talk. M pressed on with the discussion and Z said: *"I'm thinking"* and added that she was worried about the baby. M then asked Z when the baby was due and when M was told it would be July. M counted out the months until July and said: *"Ok, between now and then the baby will be inside (F's wife). Do you think the baby will be okay in there?"* M said that Z replied *"yes"* and M then asked: *"Do we need to worry right now, then?"* to which the reply from Z was *"no"*. Z was due to see Dr. Brown on the next day and M told the Guardian that when they were coming out of the sessions she asked Dr. Brown: *"Did (Z) tell you?"* To which Dr. Brown responded: *"She said something about being nervous"*. The mother then asked Z: *"Did you tell her about your big worry at the weekend?"* to which Z replied: *"No, I didn't, you tell her."* The Guardian said that M informed him that Z eventually relayed to Dr. Brown what her worry was. Dr. Brown then made a referral to MASH. The content in Dr. Brown's referral report is mainly consistent with what the Guardian informed the Court he had been told by M. It did not include the detail about Z telling M that M should tell Dr. Brown what the worry was and it included the detail that it was Dr. Brown who eventually asked what *"her big worry"* was, to which Z replied:



"I am afraid that Daddy will do to the baby what he did to me."

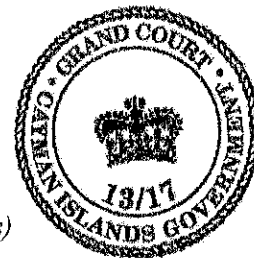
257. The Guardian in his oral evidence stated that his impression was that M had prompted Z to speak to Dr. Brown on this issue. He said that he has *"concerns about what (M) said, saying that she was sorry and comforting her"*. He felt that this encouraged or validated some fear with Z, whatever that fear may be, giving an impression that there is something to worry about. The Guardian expressed a view, which I share, that on this and on a number of other instances, M asks certain questions and raises topics to which Z had shown resistance or discomfort talking about. The Guardian is concerned that Z is being put 'on the spot' about these subjects. For example Z telling M that she had not mentioned it to Dr. Brown and that M should do that. The Guardian also highlighted the series of suggestive questions M asked Z in the recording made post the June 2019 MASH interview, which would put any child *"under a great deal of pressure"*.

258. F was greatly *"concerned and saddened"* that Z had *"been manipulated in this way"* and their announcement to Z about the baby had been *"twisted"* by M *"to elicit another forced disclosure"*. F felt that Z had been excited by the news and that M, by her actions, had:

"simply manipulated what should have been a joyous occasion into one of fear, pain and concern".

F stated that he viewed this referral as confirmation that M:

"is making direct assaults on (Z's) emotional equilibrium" by "trying to undermine a relationship with her new sister, replacing fear where happiness should be". F stated that: *"Given the evidence of my innocence, the*



recommendations of DCFS, Dr. Lam and most recently the GAL and (M's) documented lack of insight into the effect of her actions on (Z). I must reluctantly conclude that she is incapable of controlling her actions. (M) seems to have developed a mental and behavioural pattern that is causing significant distress. If she is truthful in relaying to the court what she is perceiving it is a matter of significant concern in regard to the emotional impact upon Z."

This referral, was the "last straw" for F and seemed to be what has solidified his view that to stop the continuation of the emotional harm caused to Z there should be a sole residence order made in his favour with supervised contact between M and Z.

259. The Guardian states that there is evidence showing that, despite M's actions, Z still has a positive and affectionate relationship with F. However, he highlights Z's recent unnaturally guarded behaviours when at F's house which are of "grave concern" as they "suggest psychological harm" and are a warning sign of developing parental alienation.

The Guardian stated that:

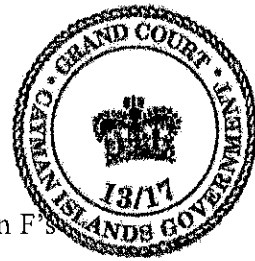
"I am in little doubt that if the current situation were to continue with father only having supervised contact and the mother continuing to believe the father is a risk to (Z), then the father will become increasingly alienated from (Z). If (Z) continues to be exposed constantly to her mother's belief (whereby mother believes that the father has sexually abused (Z) and is an ongoing risk of her), then the concern is that this will become (Z's) belief system. There are already signs that (Z) believes that her father poses a risk to her. The emotional harm that (Z) is likely suffering and will continue to suffer in such circumstances, could cause irreparable damage to her relationship with her father."

260. The Guardian concurs, based on his own interactions with M, with Dr Lam's observations about M set out at paragraph 176 herein. The Guardian feels that M's



actions arising out of her belief that there has been sexual abuse prevents her from recognising the emotional harm that Z is suffering as a result.

261. In his report, the Guardian stated that "*the best case scenario*" for Z would be a flexible shared residence with her moving fluidly between each parent's home without allegations and counter allegations. Alas, he felt that such an arrangement may not be feasible at this time as M, due to her own beliefs, will likely continue to undermine F's relationship with Z thereby causing her emotional harm. The Guardian suggested it would benefit Z if there was a period of time during which Z primarily lives with F to enable the damage to their relationship to be repaired and to prevent further emotional harm to Z. He added that he would also likely be beneficial to Z for her to have frequent contact with M, but it should be supervised by an appropriate professional. He felt that this arrangement need not be long-term, but it would provide Z "*with some emotional space after what has no doubt been a difficult time for her*". He added that the situation should be kept under review with the intention of parties would engage in therapeutic treatment and move towards a more equal shared residence arrangement, if that became possible. These recommendations were made by the Guardian in his report with the proviso they might change following an opportunity to hear Dr. Lam's views at the hearing. At the hearing, the Guardian did not change his recommendations, because he still felt that it was appropriate to give Z some breathing space. At the hearing the Guardian said that it was with a degree a reservation on his part to recommend that the contact for M be supervised and that there should be a review three to six months after the order was made. At the hearing the Guardian reiterated his view that, "*in an ideal world*", if the Court finds that



there is no child sexual abuse, he would like to see M accept that Z is not at risk in F's household, thereby possibly enabling the parties to move to a shared care arrangement.

The Law

262. When I consider the detailed background spreading over a number of years and the orders to be made I have regard to the fact that, pursuant to s.3(1) of the Law, Z's welfare is my paramount consideration. As Lord Fraser said in *Gillick v West Norfolk and Wisbech Area Health Authority and Department of Health and Social Security* [1986] AC 112 at 170:

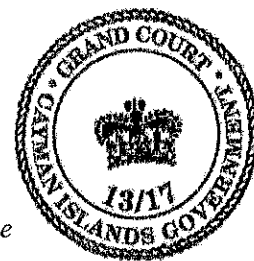
"...parental rights to control a child do not exist for the benefit of the parent. They exist for the benefit of the child and they are justified only in so far as they enable the parent to perform his duties towards the child."

263. In the *B (A Child)* [2009] UKSC 5 Lord Kerr gave a reminder of the approach to be adopted by the court when dealing with private law disputes. He began by referring to observations made by Baroness Hale in *In re G (Children) (Residence: Same-sex Partner)* [2006] UKHL 43 at paragraph 30, where she had said that:

"...The statutory position is plain: the welfare of the child is the paramount consideration. As Lord MacDermott explained in J v C [1970] AC 668, 711, this means that it "rules upon or determines the course to be followed". There is no question of a parental right."

264. Lord Kerr then added that:

"37. This passage captures the central point of the In re G case and of this case. It is a message which should not require reaffirmation but, if and so far as it does, we would wish to provide it in this judgment. All consideration of the importance of parenthood in private law disputes about residence must be firmly



rooted in an examination of what is in the child's best interests. This is the paramount consideration."

265. Therefore, all of the other principles and guidance articulated in the cases referred to by Ms. Mullen, M and the Guardian are secondary to that central principle, that any decision about Z's residence and contact arrangements must be firmly rooted in an examination of what is in her best interests. This is especially important in a case in which the Court is being asked to so fundamentally change Z's living arrangements.

266. I also must have regard to Article 9³⁹ rights. This means not only the Article 9 rights of Z but also those of F and M. As stated in The European Court of Human Rights decision in *Kosmopoulou v Greece* [2004] 1 FCR 427:

"The mutual enjoyment by a parent and child of each other's company constitutes a fundamental element of family life, even if the relationship between the parents have broken down, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention."

The 'Welfare Checklist'

267. In exercising my broad discretion when determining what orders are in Z's best interests, I must consider the seven factors contained in what has become known as "*the Welfare Checklist*" found at s.3(3) of the Law.⁴⁰

268. In relation to the **wishes and feelings of Z**, I must have regard to the same in light of Z's understanding and the fact that Z is now only 7 years old. Although Z is clearly a bright

³⁹ The Bill of Rights - Cayman Islands Constitution Order 2009.

⁴⁰ See from paragraph 101 below.



and articulate young girl, she is not in a position to understand the complexity of her situation. In such cases courts sometimes have to make difficult decisions which may not be in line with that child's likely wishes and feelings. Quite properly, due to her age, no one has asked Z to express a choice.

269. On the evidence, especially emerging from Dr. Lam's assessment, including my observations of Z in her recorded session with F, I am sure that she wishes to have a significant relationship with her Father. Dr. Lam stated that Z loves both of her parents and has such a good attachment and loving bond with each of them. Z clearly loves and enjoys being with F and his new wife. In the interval between the hearing and this judgment being completed her half- sister will have been born and I am satisfied that Z is excited about the prospect of being a part of that family with her new sister. It is evident that Z exhibits great discomfort when she feels that she is being pressured into criticising one of her parents. It is clear that she would like to develop a relationship with F and his wife without feeling pressure from M, who she may feel is not genuinely supportive of the same and without having to face frequent intrusive questioning about her time with F.
270. Having regard to the closeness of her bond with M which is clear from the evidence, including from my observations when watching her interaction with M shown in Dr. Lam's recorded session, it is likely that Z would not wish for there to be such a fundamental change in her living arrangements whereby she would live with F, especially if it involved only supervised contact to M. On the other hand, if she remained living with M and M stopped questioning her, I am satisfied that Z would wish to have much more



contact with F and she would enjoy it more if the supervision was removed as it would enable the time with F to be used more naturally.

271. I have considered **Z's physical, educational and emotional needs**. Z is doing extremely well at school and she has no special educational needs. M has ensured that Z's educational needs have been met and exceeded. Without a doubt, M has by her input ensured that Z is able to excel at school and she offers Z wonderful developmental and stimulating opportunities out of school. Unfortunately, F has not had the same opportunity to get involved and play a role in Z's educational development. He is clearly supportive of Z's extracurricular activities and there is no reason to believe that he and his wife would not be able to ensure that Z's educational needs are met.
272. Z's **physical needs** are being met and they are the same as those of any other child of her age. I am satisfied that both parents are in a position to ensure that those physical needs continue to be met if Z was residing in their household. It is sometimes contended that a mother may be better placed to assist a young girl with her physical and emotional needs as she matures and has to address age-commensurate developmental issues. However, in this case, if Z was residing with F, I am sure that he, in tandem with his wife (who I found to be very caring and child centric), would be well able to address the same.
273. It is noteworthy that throughout Z's life, F has been financially supportive to ensure that Z's educational and physical needs are able to be met even after M decided to leave her employment.



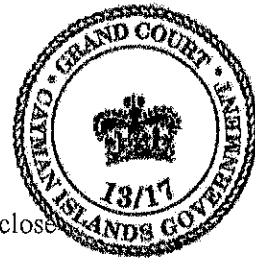
274. Z has **emotional needs** which are not currently being met. These needs include Z having a meaningful relationship with both parents now and throughout her childhood. Z needs to have the opportunity to form meaningful emotional bonds with all significant family members of her family and this includes F's wife and her new sister. There is a need for a stable and supportive home environment in which each parent does not undermine the other parent. It is important for Z's well-being that she sees her parents cooperating in her upbringing. For that to happen, it is vital that Z's relationship with any significant adult is not obstructed or undermined by another adult figure. Z's emotional well-being will be greatly enhanced if the adults in their life can cooperate and, when in the presence of Z, speak positively about and encourage the relationship with other significant family members.

275. At this time the relationship with F is damaged by these proceedings and by the actions of M. If Z does not have a meaningful and natural relationship with her father, her emotional needs will not be met. As Z is made to continue to rely too heavily on M, again her emotional needs are not being met.

276. When considering the **effect of any change of circumstances**, I remind myself that in ***Re B*** Lord Kerr commented that the status quo:

"will not always command the importance that must be attached to it in the present case."

This means that the weight to be attached to it depends on the circumstances in each case and it is therefore only one of the factors to be borne in mind when ensuring that the child's welfare is the Court's paramount consideration.



277. In this case, M has been Z's primary carer throughout her life and Z has a very close bond with her. If the Court was to grant F the orders that he seeks, and which the Welfare Officer and Guardian recommend, this would amount to a fundamental change in circumstances. Dr. Lam helpfully set out what need to be done therapeutically for Z and this family to move forward and her recommendations⁴¹ are equally applicable if there were a change of the status quo and may help Z greatly with any transition. Regrettably, I am not particularly helped by the professionals as to how such a transition may be best handled, especially at the beginning, and I do feel that greater thought needed to be given to this in their assessments.

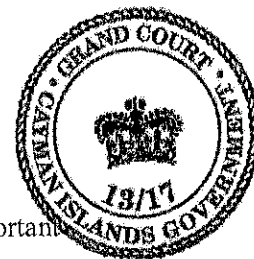
278. Without a doubt, M would be devastated if the orders sought by F were made. She relies upon Z for her own mental well-being and it would not be exaggerating to say that almost everything she does revolves around Z. When cross-examined by F's Counsel about the effect on M if a residence order being made to F, M replied:

"Z would be very upset....That order will shatter my world to pieces. She is my world. If that happens I have a psychologist that I see and touch base with my mother."

When asked whether she would offer support to Z in any such move M said:

"I have always and always will endeavour to make things easy for Z, as I am physically able to. I would do all in my power to help her with what she is faced with."

⁴¹ Set out at paragraph 200 herein.



If the status quo was changed, such a supportive role by M would be extremely important for Z's emotional well-being. On the other hand, M's undermining a new family arrangement would be potentially very damaging for Z. M confirmed that although she had earlier said she would relocate to Canada if she "*lost custody*" she meant that she would do that if she "*was not allowed any access at all*", but if she was allowed access she would stay in Cayman and take up as much access as possible.

279. Dr. Watkin when examined by M at the hearing stated that:

"I would have grave concerns about (Z) being completely removed from your care. Where possible she should have access to both parents. Little girl's last 7 years, be very destructive to (Z) to remove from (M's) care. There may be long term consequences, I am not a psychologist. From what I know of you and (Z) I see no reason why she should not stay with you as her primary carer."

280. Although Dr. Brown has not presented any evidence to this Court, her views about the effect of any change of circumstances are made known from the Guardian's Report. I recognise that F has not been able to cross-examine Dr. Brown in relation to them. Dr. Brown told the Guardian that:

"(Z) is so attached to mum, I think it is going to be extremely hard to make that transition. More than weekly therapy would be needed."

The Guardian said that Dr. Brown:

"...spoke of the importance of therapeutic support with an adult outside of the whole situation"⁴² and keeping (Z's) general schedule as 'consistent' as possible.

⁴² Dr. Lam was the only professional to present evidence about the therapeutic package that could or would be in place moving forward - see paragraph 200 above.



She also referenced the importance of (Z's) dog being with her, the dog is a big source of support for her."

The Guardian reported that if there were change of residence that Dr. Brown felt that it would be *"very devastating"* for Z. Dr. Brown, when expressing this view, has never seen Z with the father or seen her interaction with him.

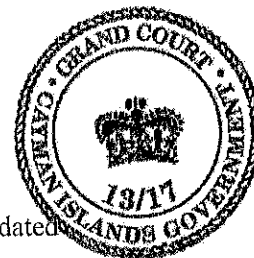
281. The Guardian in his report indicated that, in reaching his conclusion, he had taken on board Dr. Brown's comments about the amount of attachment between Z and her primary carer, M. The Guardian recognised that:

"any drastic change to the status quo could pose a risk of emotional harm both to Z and to her mother."

The Guardian added that he was: *"acutely aware of the impact that a transfer of residence would have on Z"* and felt that Dr. Lam may be able to give an expert view on how best to manage such a situation to minimise the impact on Z.⁴³

282. F in his affidavit sworn on 5 February 2020 feels that the *"impact"* of a change which would result in Z being removed from a situation in which she is *"subject to manipulation and coercion"* from M would be *"overwhelmingly positive"*. He highlights that he lives on the same road as Z's school and that due to flexibility at his work, he could make all the arrangements for school drop-offs and collection. F states that he and his wife can ensure that Z attends her extra-curricular activities and that she will have a balanced and healthy diet. He points out that Z already has her own bedroom at his home

⁴³ Set out at paragraph 200 herein.



which she has her own clothes and that and her dog can “seamlessly” be accommodated there. F indicated that he would:

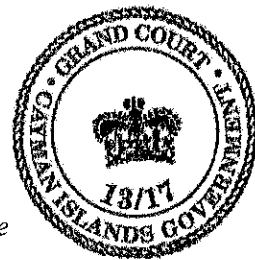
“make sure that (Z) has the necessary support and counselling to manage this change.”

283. F also states that if Z was residing with him that he and his wife would remain supportive of Z’s relationship with M which is “an important bond to foster”. F said that this would be done subject to M developing insight into how her behaviour has negatively impacted upon Z and caused her emotional harm. F’s wife was extremely insightful when I asked her during the hearing about the transition and she said “I understand how absolutely massive” the change for Z would be. She added:

“Under normal circumstances we would not want to put a child through such an abrupt change. We are worried about a shared arrangement. (Z) will have a couple of weeks or two with us and then go back to (M) and during that period of time all she is hearing is undermining (F) or both of us and just put her under all that pressure. In an ideal world, shared arrangement would not be so abrupt... It is going to be tough, I cannot even imagine. The good thing is that (Z) would be in a loving environment and it is not like she is going to strangers who do not care and love her. I am aware that there will be a lot of emotional challenge... and it would be heart-breaking.”

However the inevitable upset for Z if such an order were made should be considered alongside F’s wife’s further insightful observation made in her affidavit sworn on 5 February 2020 in which she said:

“Z has been subjected to a lot of probing over the past twelve months and she needs to have a chance to rebuild a normal and natural relationship with her father, so she has confidence and security in her own life. It is a tragedy that instead of enjoying to the fullest and having three loving adults in her life, she is

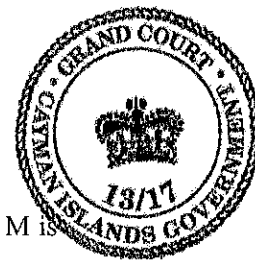


instead kept in these unnatural and uncertain circumstances for a long time allowing one parent to undermine and erode her bond with the other parent. This can have lifelong consequences and can reach an irreparable level."

I should add that if such an order is made, she would be in a family unit with her newly born sister.

284. **In relation to Z's age, religion, sex, background and any other characteristics which will be relevant to the Court's decision.** I have regard to the fact that Z is a young girl and that, especially as she gets older, she will feel the need to talk openly about the changes in her life as she develop physically and mentally. M, as the female primary carer to date is better placed than F when such a situation arises. However, it is evident that Z has a good loving relationship with F's wife and she in tandem with F would be able to provide the appropriate care and advice for a maturing girl.

285. F is a Methodist and M is a Sikh. It is right that a child who has parents from different racial backgrounds and different religious backgrounds be able to embrace both religions. This can be done by ensuring that a child maintains a long term relationship with both sides of its family. That can also be done by enabling a child to celebrate all of the important religious holidays, no matter whose household she is in at the time. The parent with whom a child resides should promote the interest in and stress the importance of the other parent's religion and heritage. M states that Z has been brought up as a Sikh with knowledge of the teachings of Sikhism. There is not a congregation in Cayman that practices M's religion. Z has lived throughout her life and attended schools in the Cayman Islands which is a multi-racial and multi-religious society having regard to the



diversity of those who are fortunate enough to reside here. The impression given by M is that although she may celebrate religious holidays, her life choices are not determined by her religion. For example, she felt able to marry F and it does not appear that the serious relationship that M informed the Court she had been in been post-separation from F had been with a gentleman from her own faith.

286. I am satisfied, as commented upon by the Welfare Officer in her first report, that F agrees with the basic teachings of Sikhism that that he would ensure that the religion would continue to play a part in her learning and childhood life. F also stated that, as long as he was satisfied that Z would not be improperly retained if she travelled overseas, he would support Z traveling to see her maternal family. If Z remains in Cayman with M, she will continue to mix with children of the Christian faith.
287. If the Court were to maintain the status quo, it would be very difficult for Z to form a proper relationship with the paternal side of her family, due to M's overprotective views and micro-parenting approach.
288. I have considered **any harm that Z has suffered or is at risk of suffering**. The evidence does not support M's contention that Z has suffered or is at risk of suffering physical harm from F. The evidence is clearly insufficient to prove any of those allegations on the balance of probabilities. Although carefully reviewing Dr. Watkin's evidence and the material emanating from Dr. Brown, I find that the assessment by DCFS, that what arose from the involvement of MASH and that importantly the more persuasive and more balanced conclusions reached by Dr. Lam support such a contention. I have given careful



consideration as to whether I can and should go further and make a positive finding that Z has not been sexually abused and, if so, with what degree of probability or certainty. I can of course only do so if, after due consideration, that is the true state of my mind. The difficulty lies in being positive about a negative. Despite the content in Dr. Brown's materials, viewing every aspect of the case as a whole, I do feel sure, and so find, that Z has not been sexually interfered with or physically abused by F or at all.

289. Apart for the intrusive medical examinations and the intrusive physical examinations carried out by M on Z, I am satisfied that Z has not suffered nor is she at risk of suffering physical harm from M. However, a substantial concern in this case revolves around **emotional harm** caused to Z due to what Z has had to endure as a consequence of M's unwavering belief that F has sexually abused her. There is greater concern that unless M is able to address her belief and stop damaging Z's relationship with F, the emotional harm will escalate for Z and cause longer term irreparable emotional damage.

290. Dr. Watkin when examined by M at the hearing stated that:

"I have never had any concerns for her health or welfare in your care. I believe you have a very good relationship together and that she loves you very very much."

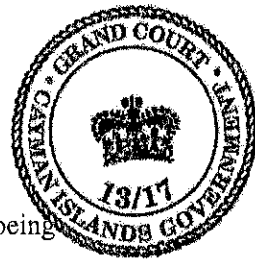
When cross-examined Dr. Watkin said:

"I nor my staff had any concerns about the relationship with the mother and how she acts in the presence of the Mother at all. I have never seen the father with (Z) or seen his interaction with (Z)."



Neither Dr. Watkin nor Dr. Brown felt it appropriate for them to assess whether Z may have suffered emotional harm or was at risk of suffering emotional harm due to M's conduct resulting from her belief that sexual abuse had occurred. It seems that they both believed that M could not be criticised for the way she had acted throughout, including the manner her questioning of Z. To be fair to them, it may be that they understandably felt that such an assessment should be left to the Dr. Lam who they both had recommended to carry out the trauma assessment.

291. Dr. Lam informed the Court that she had not seen emotional abuse from M, adding that she was concerned about Z's regressive behaviour around M and her anxiety. Dr. Lam, in a balanced way said that if the allegations of sexual abuse are true and were ignored, then that would be devastating. However, she stated when referring to the emotional state of a child that it would be equally damaging to the child if abuse had not happened, but it were treated like it had. She told the Court when questioned by the Guardian that she did have concerns about emotional harm and that the risk of that is "*stacking up*". She highlighted the emotional turmoil for Z arising from the rupture in this family caused by the parental conflict, allegations an investigative process. She feels this has caused emotional distress to Z and if not halted will result in parental alienation of F. Importantly, Dr. Lam is concerned about emotional harm that arises if there is no sexual abuse, because to then treat a false allegations as being true, as M and Dr. Brown have been doing, can be traumatising to a non-abused child as that child may come to believe that they had been abused because that is what an important adult in their life is telling them. A parent's preoccupation with child abuse may rub off on a child. This potential



can be illustrated by Z's recent change of behaviour at contact with F when she is being hypervigilant and at times acting in an unnatural manner

292. I am satisfied that, if the current child arrangements remain, Z is at a real risk of suffering emotional harm. There is evidence that emotional damage to Z has already commenced. Z's relationship with F is extremely important for Z's emotional wellbeing and this may be irreparably damaged. If the child arrangements remain the same and M retains her same beliefs then there is a real risk of Z suffering emotional harm. Even if Z were to reside with F if M continues, when Z is with her, to act in the manner that she has since January 2019 as a consequence of her belief about sexual abuse, again there would be a real risk of emotional abuse.

293. **In relation to the capability of the child's parents (or any other person the Court finds relevant) at meeting the child's needs.** As Dr. Lam highlighted at page 40 in her report:

"No parent is expected to be perfectly attuned and meeting their child's delicate balance of needs consistently every moment; however, decades of research has shown that "good enough" parenting (Winnicott 1965) is the general style of parenting considered essential to healthy development."

I am satisfied that both parents can meet Z's physical needs. I am also satisfied that F's wife would be able to play a positive and important role in meeting Z's needs. However, the concern I have is about M's ability to meet her emotional needs.



294. From the material before the Court, it appears that Dr. Brown has not given any thought to this, as she has failed to recognise or even consider the emotional damage that M's conduct, arising out of her intransigent belief that F has, may have and if left unabated will cause to Z. On the material before the Court including her exchanges with the Guardian, and without the Court having the benefit of hearing from Dr. Brown attending this hearing to elaborate on her views, I am not satisfied that Dr. Brown has reported conclusions without conducting a balanced assessment. M, due to her pre-occupation with sexual abuse, appears to have been unwilling to even consider, if the Court were to determine that there has been no sexual abuse, the possibility of there being any detriment caused to Z's emotional wellbeing (i) if Z was unable to have a meaningful relationship with F moving forward, (ii) from the restricted relationship, and (iii) if M persists with her rigid belief that there has been sexual abuse.

295. I have no doubt that F has taken on board Dr. Lam's firm recommendations about the required therapeutic input required for Z and this family and he would what was required and make the resources available. I recognise that for Z's sake F has persevered over an extended period of time with his applications despite the obstacles placed before him, including using up all of his post- divorce family savings with, alarmingly, total costs expended and estimated on this case by F being in excess of CI\$250,000⁴⁴. The recommendations made by Dr. Lam would apply whether or not there is a change of residence. I am not satisfied that M would accept the recommendations from Dr. Lam as she believes that her report and methods are flawed and "*unethical*." At this stage I am not satisfied that M will properly engage with the required therapy, especially if the status

⁴⁴ Form A Estimate of Costs 27 June 2017 with disbursements CI\$253,074.



quo remains. This would be very emotionally damaging for Z as Dr. Lam emphasised that the immediate need for Z is stability and that then work should be undertaken to repair the attachment damage caused by the parental conflict, allegations and the investigative processes which (Z) has been subjected to. This would require M to change her approach to F and his relationship with Z, and depart from her goal to prove that there has been sexual abuse. This would be very difficult for her as she genuinely believes that sexual abuse has occurred and she will need to engage in individual therapeutic work to address this to enable her to engage with the broader family therapy required for this family.

296. **The range of the powers available to the Court in these proceedings** are wide. I have the jurisdiction to make the orders sought by both parents, namely a residence order to that parent with supervised contact to the other parent, or even as suggested by M during cross examination a no contact order. When making my determination I have considered whether such orders would be in the best interest of Z in the circumstances. I have also considered whether other orders might better meet the best interests of Z, including shared residence orders and unsupervised contact.

Conclusions

297. This is an upsetting and difficult case. Both parents dearly love Z and it is clear that this is reciprocated by Z. Despite this, the Court finds itself in a position where each parent seeks orders which would potentially damage the relationship of Z with the other parent. The Court has a duty to not only try to do what is best for Z in the short term but also in the longer term. This is particularly important because since January 2019 this young



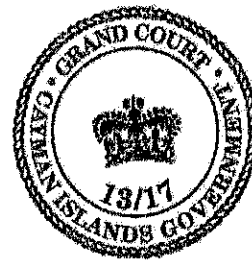
girl's family life has been unstable due to the upheaval in the family dynamics. There is evidence that Z is being emotionally harmed. No matter what s.10 orders are made, the current situation cannot remain and, for Z's sake, Z and the parents must engage in the wide-ranging therapy so rightly recommended by Dr. Lam. One of the troubling features of this case is that M's position if anything has hardened during the proceedings, probably not helped by the fact that her therapist Dr. Bodden, Dr. Brown and Dr. Watkin were supportive of and fortified her belief that F had abused Z and by the fact that M is unwilling to accept the views and propriety of professionals who she cannot get 'on-side'.

298. My consideration of what orders are appropriate orders are based on my finding that F has not sexually abused Z on any of the occasions set out by F or at all. Having made the finding that M's allegations are not true, I must still have in mind that, as stated by Ryder LJ in *Re K (Children)* [2014] EWCA (Civ) 1195 at para 60:

"The removal of a child from the care of a parent whether by a transfer of living arrangements from one parent to another or by placing the child into public care is not and must never be a coercive or punitive measure. It is a protective step grounded in the best interest of the child concerned."

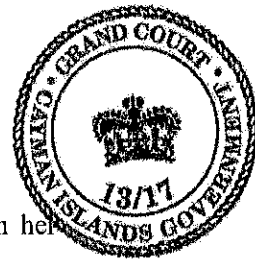
299. It is important to reiterate that, even if allegations made by a parent are untrue, that does not mean that a child should be removed from the care of that parent. It is of course an important factor and legitimate concern, but it does not trump the Court's duty to make any order based on its assessment of what is in the child's best interests. The factors in the welfare checklist must be reviewed and I have, as a part of that process, herein also considered the following:

- (i) M's motives in making the allegations;



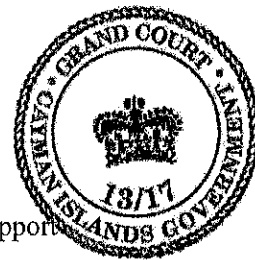
- (ii) Z's reaction to the allegation;
- (iii) the effect on Z flowing from her seeing professionals especially if there were intrusive examinations as a result;
- (iv) the effect on Z being brought into the dispute between the parents by M raising the allegations with her;
- (v) whether Z will be able to maintain a meaningful relationship with F and M; and
- (vi) whether M has sufficient insight that the effect of continually making unfounded allegations would cause emotional harm to Z.

300. Although I have found that the allegations are not true, when considering M's motives for making them, I do not believe that they have been deliberately fabricated by M with the intention of hurting F. However, I find that some were made to manipulate the course of the litigation in an attempt to ensure that M retains full control of Z's upbringing. This is an area where M may require assistance, as it is evident from her conduct that she has overreliance on Z for her own well-being and a need to be in control of Z's upbringing. Unlike in some cases of this nature I have not had the benefit of hearing from Mrs. Bodden, M's Psychologist at OnCourse Cayman, who if not over allied to M may have been able to provide the Court with some background about M's emotional state. From M's demeanour, I am satisfied that for some of her allegations M has convinced herself that sexual abuse has occurred and therefore has sought to search for and accept only evidence that might support such a contention and disregard countering evidence or reasoning. In this case, there may well be a combined explanation for the allegations, as the timing of them being made in referrals just before or just after important stages of the proceedings is too much of a coincidence. The impression I have is that initially M



formed an honest, but erroneous belief that Z may have suffered abuse based on her interpretation of Dr. Watkin's communications with her and at the time she partly acted from a desire to protect. However, thereafter she has been driven to shore up her position that allegations against F were true and has deliberately set out to interpret situations and to a degree manufacture evidence of sexual abuse where in fact it had not happened.

301. A child who lives primarily with one parent needs to know that she is loved by both parents, despite any ill-blood they have for each other. A residential parent should promote both maternal and paternal affection. That parent must encourage that affection not out of their good feeling for the other parent but because they should have sufficient insight to understand that the child's emotional wellbeing is dependent on having the love of both parents. When I consider what order is in Z's best interest, M does not have that insight at this time and during the hearing even stated that she felt that it was better for Z to have no contact with F. It is a duty of each parent to foster and encourage the child's love and respect for the other parent. The making of unsubstantiated allegations of sexual abuse by one parent is not consistent with that duty and, if not addressed, will seriously damage that relationship, especially if it continues even after the Courts have found the allegations to be untrue. M's hardening view and her clear indication, made during the hearing and to the Guardian without even seeing the reasons for any decision made by the Court, that she intends to appeal any decision not consistent with her position is an indicator that M will likely find it difficult to accept any finding and she will continue with her current approach thereby putting at risk the development of Z's relationship with F.



302. When considering a change of residence for Z the following factors may not support such an order being made:

- (i) Z has made very good developmental progress in M's care. She has received good day to day parenting and, as F insightfully and very fairly highlighted in his oral evidence, Z is a credit to M;
- (ii) A change of residence will disrupt the pattern of care within the home that Z has been used to all her life while in M's care;
- (iii) Z is doing very well at school;
- (iv) Without M's support, Z may find the move to F to be difficult to move and she may not settle with F and his wife;
- (v) If M was unable to accept the order, arrangements for contact with M may be difficult at the outset; and
- (vi) A move could bring real losses for Z, and risks, which could amount to harm if the transition was unsuccessful.

303. When considering a change of residence for Z the following factors may support such an order being made:

- (i) A move is the only way of restoring a meaningful relationship for Z with her F and wider family;
- (ii) There is a need for Z to find a stable and loving environment before any meaningful therapeutic work can be undertaken;
- (iii) The therapeutic mechanism outlined by Dr. Lam as being required cannot be embarked upon having regard to M's current attitude;

- (iv) In F's household, Z's emotional well-being may be safeguarded by taking her out of an environment in which she is improperly being brought into the dispute due to M's pre-occupation with establishing sexual abuse allegations to such an extent that Z may be forming a similar inaccurate belief;
- (v) Z's relationship with F is being stifled by M and Z's natural interaction towards F is being affected by Z's hypervigilance which has arisen as a result of M's continual and over an extended period interactions with Z about sexual abuse by Z;
- (vi) F and his wife are, I find, capable of bringing up Z appropriately and meeting her needs. Although they are untested as full-time carers, there is no reason to believe that they cannot take on that role successfully;
- (vii) Z's new sister has recently been born and Z will enjoy and benefit from being with her and feeling part of that family structure; and
- (viii) The father and his wife will support Z's relationship with M and, if M conducts herself appropriately, contact arrangements should be easy to make.

304. I have to balance these factors including the others mentioned in this Judgment when I look at the whole picture and at the short, medium and long term options. Although I share Dr Lam's view that M has not knowingly emotionally abused Z, I find that M has not had sufficient insight to realise that (i) her actions, (ii) the restrictions on F's relationship with Z, and (iii) the way she has drawn Z into her mission, and to a degree manipulated Z, to prove sexual abuse has caused emotional harm to Z. This has to be balanced by my finding that Z and M have a very strong bond and that any change of residence would, despite F and his wife's best efforts, be distressing for Z. I acknowledge



that there are a number of ways in which a transfer of residence might run into difficulties.

305. The hope is always that, once the Court has given its Judgment, everyone can move on. This would require M to say that the allegations were made in good faith and to protect Z, but that she now accepts the Judgment. I accept that this will be difficult when M is so driven by her emotions and strongly-held feelings and therefore, the status quo remains. M will likely continue to undermine Z and F's relationship. Weighing up matters, I find that it is unacceptable from the point of view of Z's welfare in the short, medium and long term for her to be deprived of a paternal family relationship which is essential for her development as a balanced child, and later as an adult. Although leaving Z to grow up residing in M's home with uncertain contact with F may be the easier short-term practical solution, it does not provide the foundations that she needs for a healthy, rounded future. Although not living full time in M's house will be initially distressing for Z, the Court when considering what s.10 orders to make will seek to maintain Z's relationship with M.
306. Taking everything into account, I am satisfied that at this time the Consent Order should be varied and that there should be a Residence Order made in F's favour. M retains her parental responsibility and she should be consulted about major decisions in Z's life, but the Residence Order will enable F to unilaterally make the day to day decisions about Z. This will promote Z's stability and help her transition away from living exclusively in M's home.



307. Despite my concerns about M's possible reaction to my orders and her hitherto strong belief about sexual abuse with the damaging consequences that have and are at risk of flowing from that if Z remained primarily with M, I find that that it would not be in Z's best interests to have her interaction, at this time, curtailed to supervised contact with M. There is limited information about how a schedule for frequent supervised contact could realistically be set up. In balancing the risks, to transition from living with M for all of her life to a medium to long term supervised contact regime with M would be too distressing for Z.

308. I have thought long and hard about whether M might, at this time, be able to conduct herself in such a way that the flexible arrangement which the Guardian terms to be in the "*ideal world*" could be ordered. I would have preferred to have been able to make a shared residence order with Z spending her time roughly equally divided between the parents, a position that might have been feasible if the hearing had progressed at the end of July 2019 and if the Court had then felt that the parties would conduct themselves appropriately under that order. Due to her age and the stage she is at in school, an appropriate routine under a shared residence arrangement could be set up if the parents were able to effectively manage it and communicate. Regrettably, the case now has a different complexion to that which existed in July. M's views have hardened and the need for Z's emotional wellbeing to be immediately protected has increased.

309. The retention of the status quo is not in Z's best interests, the risks to her emotional wellbeing in the balance outweigh the distress that will be caused by any change. Nor can a shared residence arrangement be put in place at this time as there is the great need for



stability for Z away from the potential emotional harm caused in M's home and a need for the therapeutic support for Z and this family to be put in place promptly. Primarily residing with F and his wife will ensure that, if M continues to be unable to conduct herself in a way that is conducive to Z's well-being, it can be detected and monitored by F.

310. I would have preferred there to have been a gradual transition to F, but I do not feel that is feasible due to M's likely immediate reaction to these orders. Z should be given the opportunity to settle into F's home without potential disruption from M, especially as the start of the school year is soon upon us. Accordingly, there will be a Residence Order providing that Z shall live with F from 12:00 PM on 28 August 2020. Both parties are expected to sensitively handle the intervening period until then as well as the thereafter transition to ensure Z's well-being. The draft of this Judgment containing my orders is to be provided to the parties on 21 August 2020 to enable them to then conduct their review pursuant to Practice Direction No.1/2004⁴⁵. Therefore, although the Judgment may not be delivered until 27 August 2020⁴⁶, the parties will have had seven days' notice of the transition date, the 28 August 2020.

311. After the initial settling in period of three weeks, I order that Z will have direct unsupervised contact with M on alternate weekends, after school until Monday morning at school. In the week when there is no weekend contact, Z should have overnight contact with M on Wednesday after school until Thursday morning at school. However, this

⁴⁵ As M is in person, F's attorneys may show a copy of the draft Judgment to F.

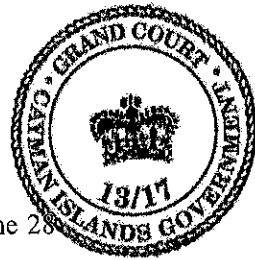
⁴⁶ Parties will be required as per GCR Practice Direction 1/04 to provide their written suggestions about typing errors, wrong references of fact or citation of authority or other minor corrections of that kind in the draft Judgment by or on Wednesday, 26 August 2020 at 3:00 PM.



contact order and its commencement date are made on the basis that M does not seek to undermine the new family arrangement. If F feels that indirect contact will assist Z during the initial three-week period, then that contact may take place. The parties are to agree additional regular indirect contact between M and Z to commence after the initial three week transition period (i.e. from 18 September 2020), but again this will depend on whether it is used positively and not used to undermine the family arrangement. The parties may also agree extended contact during school holidays and on special days, such as birthdays.

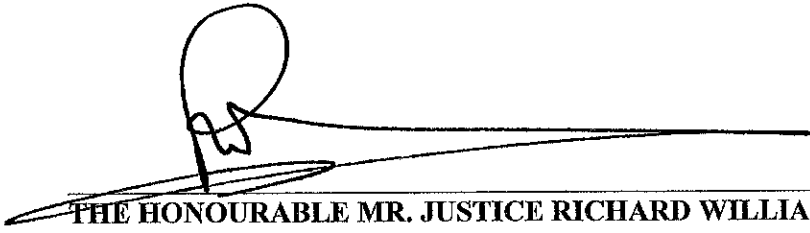
312. I agree with the Guardian that this is a case which the Court should keep under review. This will mean that the welfare officer and the Guardian will remain engaged by meeting with the parents, Z and with any professional who become involved. Importantly, they will be able to also monitor the transition and, if they had concerns about Z's welfare or about how Dr. Lam's recommendations are being applied, they may report the same and seek to have the matter return to Court. The matter should come back before me for review on the first open date after 18 January 2021. The purpose of the review will be to consider whether there may be any increase in contact between Z and F and how each parent has supported Z during the transition. Having regard to the recommendations made by Dr. Lam, the Court will be interested to be updated at the review hearing about the status of the therapeutic programme that needs to be put in place for the family and how each parent has engaged in that vital work.

313. I therefore make the following orders:



- (i) There shall be a Residence Order providing that Z shall live with F from the 28 August 2020;
- (ii) M shall give up Z to F on that date;
- (iii) There shall be no direct contact between M and Z within three weeks of Z moving to live with F, unless F otherwise agrees. There may be indirect contact at dates and times agreed by F during that period;
- (iv) Z will have unsupervised contact with M on alternate weekends, commencing after school until Monday morning at school. In the week when there is no weekend contact, Z will have overnight contact with M on Wednesday after school until Thursday morning at school. This pattern of contact will commence the weekend of 18 September 2020;
- (v) In addition, there shall be reasonable regular indirect contact between M and Z after 18 September 2020, the timings to be agreed by the parties;
- (vi) There shall be such further contact or variation of contact ordered between Z and M as may be agreed by the parents;
- (vii) Pending the review hearing, to ensure the stability of Z during the transition period, and to prevent any unauthorised removal of Z from the jurisdiction, a Prohibited Steps Order is made forthwith preventing Z's removal from the jurisdiction by either parent without both parents' consent in writing or order of the Court;
- (viii) This Order replaces previous Orders in this matter and for the avoidance of doubt paragraphs 1–6 of the Consent Order and paragraphs 9-11 of the 15 July 2019 Order are rescinded; and

(ix) Any future applications are reserved in the first instance to Williams J, if available.



THE HONOURABLE MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT

