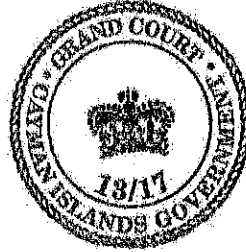


*The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgement itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.*

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FAMILY DIVISION**

**CAUSE NO. FAM 143 OF 2016**

**BETWEEN:**



**X**

**APPLICANT**

**AND**

**Y**

**RESPONDENT**

**Appearances:** Ms. Yvonne Mullen of Broadhurst LLC for the Applicant  
Respondent in Person  
Mr. David Holland of KSG Attorneys, the Guardian ad Litem

**Before:** Hon. Justice Richard Williams

**Heard:** 19-22 May 2020, 25 May 2020, 27 May 2020, 1-5 June 2020

**Applicant's  
Written submissions:** 15 June 2020

**Respondent's  
Written Submissions:** 17 June 2020

**Draft Circulated:** 21 August 2020

**Handed Down:** 27 August 2020

**HEADNOTE**

*Children Law (2012 Revision) - Father's application to vary residence order - Mother's application to vary contact order - allegations made by mother of father sexually abusing child, fact finding and burden of proof - human rights considerations and s.10 Children Law applications - A child's welfare is the paramount consideration in the determination of residence and contact applications*

**JUDGMENT**



## **Introduction – Applications – Parties’ Positions**

1. The father and mother are both aged in their early forties. They are expatriates who have been granted Cayman status. The parents were married in 2011 and were divorced in early 2018. They have one child, a daughter who is aged seven. I hereafter refer to the father as “F”, to the mother as “M” and to the child as “Z” in this Judgment.
  
2. The parties, with the aid of able legal representation, reached a comprehensive final financial and child order on 7 February 2018 (“the Consent Order”). At that time, M was living in the Cayman Islands and, although he retained a residence in Grand Cayman, F was primarily based in the Bahamas for employment reasons. The relevant parts of the Consent Order provided that:
  - (i) there be a Residence Order in favour of M in relation to Z;
  - (ii) M would have unrestricted authorisation to travel with Z; and
  - (iii) Z would have unsupervised contact with F at times and dates to be mutually agreed by email between the parties.

In the preamble to the Consent Order, M and F recognised that they had parental responsibility and that, although Z would continue to reside in the Cayman Islands with M, all major educational and health decisions were to be agreed between the parties.

3. M contends that F’s move to Bahamas was not the reason why a sole Residence Order in her favour was agreed. M stated that her reasoning for the requirement for such an order at the time was based on her view that F was unable to prioritise Z’s needs and welfare in



relation to food, health, legal status/rights, contact arrangements as well as alleging a history of abuse by F towards herself.

4. F returned to live in the Cayman Islands in July 2018, but after his marriage to his current wife in October 2018 issues in relation to contact began to arise, especially when F announced his wish to vary the contact arrangements to reflect his greater presence in Grand Cayman. F sought a *“fixed, reliable contact schedule”* to enable him to be a *“more active parent”*. F contends that he provided a proposed contact schedule which M was not content to accept and indicated to him that *“the matter was now with her lawyers”*. F highlighted that M moved from unilaterally changing arrangements for him to collect or drop Z at school to unilaterally withdrawing all contact. He noted that M also refused to allow him to take Z overseas to attend a family funeral with him. M stated that she did her best, depending on her and Z’s schedules, to accommodate F’s contact requests, even the ones that were made *“last minute”*. It is evident that the order sought by F in January 2019 would have introduced a more structured contact regime and would have resulted in a departure from a situation where M was able to decide if and when contact would take place. It would inevitably have taken away the control that M enjoyed in relation to contact arrangements.
  
5. Due to the parties’ inability to agree a variation in the contact arrangements coupled with M’s unilateral termination or suspension of contact in January 2019, F issued a Summons on 6 February 2019. By his Summons, F sought a variation of the contact arrangements set out in the Consent Order. F was applying for a shared residence order or in the



alternative, a fixed contact schedule enabling the child to spend equal time with her parents<sup>1</sup>.

6. At that stage, the proceedings could be characterised as being standard s.10 Children Law proceedings. Alas, shortly thereafter the matter began to take on a more troubling complexion, as M alleged that Z had for years been and was still being sexually abused by F. M's belief in her allegations has strengthened and is still relied upon.
  
7. F's Summons was, after some delay, due to be heard on 9 July 2019. At that time F was still seeking a shared residence order with Z spending equal time with the parents. M was seeking a continuation of the interim supervised contact order. Unfortunately, that hearing could not proceed, as M had raised new evidence that she believed supported her allegations of abuse by F on Z and which required a trauma-informed psychological assessment by a psychologist with specific expertise in trauma and related symptomology. M relied upon written observations and a referral made by Dr. Colleen Brown, Z's treating child psychologist who had been unilaterally retained by M and who was employed at OnCourse Cayman Ltd ("OnCourse"). Dr. Brown shared her view that Z was exhibiting behavior seen in children who had suffered trauma and she recommended that Z should be assessed by Dr. Erica Lam, a psychologist with the requisite expertise.
  
8. For a number of reasons, including the disruption caused by Covid-19, there were further delays and the final hearing did not actually commence until 19 May 2020. The issues,

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<sup>1</sup> Stated in his affidavit sworn on 5 February 2019.



and the parties' respective positions, are now of a very different and far more troubling nature when compared to those which were raised at the time of the filing of F's February 2019 Summons.

9. F now seeks a sole residence order with a supervised contact order made in relation to M. This position is supported by Mr. David Holland, Z's Guardian ad Litem, and is consistent with the recommendations of Mrs. Carol Robinson, who is the Court Welfare the Social Worker tasked with investigating the allegations of sexual abuse. M seeks a continuation of the sole Residence Order in her favour and, if there is to be contact for F with Z, that there be a supervised contact order. I note that during cross examination on 27 May 2020, M stated that it would be better for Z's state of mind for there to no contact and that Z does not want to see F. One could hardly imagine a more polarised position in a private law child case.

#### **The Hearing and Function of the Court**

10. A great deal of evidence was heard at this final hearing over eleven days. I am conscious of the fact that F had legal representation and that M was representing herself at the hearing. M previously had the benefit of legal representation in these proceedings from a number of experienced members of the Family Bar from at least three different firms of attorneys until January 2020.
11. A number of aspects of the right to a fair hearing, guaranteed by common law and s.7 of the Cayman Islands Bill of Rights ("BOR")<sup>2</sup>, are applicable to these proceedings. These

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<sup>2</sup> The Cayman Islands Constitution Order 2009.



uncontentious aspects are very helpfully summarised as follows by Peter Jackson LJ<sup>3</sup> at para. 23 in the recent judgment in *Re C (Children)(Covid-19: Representation)* [2020]

EWCA Civ 734:

*“(1) Fairness is case-specific and is to be assessed in relation to the proceedings in their entirety: Ankherl v Switzerland (2001) 32 EHRR 1 at [38].*

*(2) There must be protection not only from actual unfairness but also from the risk of unfairness: Kanda v Government of the Federation of Malaya [1962] AC 322 (PC) at p.5.*

*(3) The right of access to the court must be effective, so that the individual has the opportunity to address all material that might affect the court's decision and is placed in a position to call evidence and to cross-examine: Mantovanelli v France (1997) 24 EHRR 370 at [36].*

*(4) The importance attached to the welfare of the child must not prevent a parent being able effectively to participate in the decision-making process: L v UK [2002] 2 FLR 322 at 332.*

*(5) The principle of equality of arms entails a reasonable opportunity to present one's case, including one's evidence, in a way that does not place one at a substantial disadvantage to one's opponent: Dombo Beheer BV v The Netherlands (1994) 18 EHRR 213 at [33].*

*(6) The administration of justice requires not only fairness but the appearance of fairness: R v Leicester City Justices ex p Barrow [1991] 2 QB 260; P, C & S v UK [2002] 2 FLR 631 at [91]. However, the misgivings of individuals with regard to the fairness of the proceedings must be capable of being objectively justified: Kraska v Switzerland (1994) 18 EHRR 188 at [32].*

*(7) The determination must be made within a reasonable time: Article 6 itself.”*

12. I have regard to Peter Jackson LJ's summary and to the Court's responsibility to ensure that this family has a right to a fair trial. M is an extremely intelligent person and she presented her case in a very organised and impressive manner, with a masterful grasp on

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<sup>3</sup> In relation to the mirror provision at Article 6 European Convention on Human Rights.



detail. In fact, M's research for the hearing and cross-examination of witnesses, including of expert witnesses, was of a higher standard than I sometimes see from counsel. These skills may well have been developed by M in her professional life. M ably presented her case and was not prejudiced by her lack of legal representation, especially as appropriate and acceptable leeway was afforded to her in relation to procedural issues, including introducing new pieces of documentary evidence<sup>4</sup> belatedly during the hearing. Leeway was also given to M enabling her to explore and to develop examination areas in chief and cross-examination, albeit sometimes in a rather overly-repetitive manner, so as not to restrict her having a full opportunity to present the case that she wished to present. I acknowledge the flexible and sensitive approach taken by Ms. Mullen, Counsel for F, who, save for on less than a handful of appropriate occasions, did not oppose these opportunities being given to M.

13. Before I move away from s.7 BOR, although I recognise the practical issues caused by the Covid-19 Pandemic to the Court lists, I note and share F's concern about the unfortunate delay in this final hearing being effective. When considering any reasons for the delay, I also have in mind the effect of the referral from Dr. Brown that was provided shortly before the final hearing scheduled to commence on July 2019. The information provided from Dr. Brown fundamentally changed the direction of and case management requirements in this case, importantly introducing the necessity for an independent child psychologist to be instructed to assess Z and then report to the Court.

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<sup>4</sup> With F's consent.



14. The findings that the Court is asked to make based on the evidence given at the hearing in this case will affect this family for the rest of its members' lives. These cases require careful and thorough scrutiny. The consequence of there being a number of allegations from Z's tender age to date and the need to put that into factual/historical context means that this judgment is unfortunately far longer than one might expect or ordinarily wish it to be. The Court was tasked by the parties to not only conduct a fact finding hearing but also to then go on to make the highly contentious children orders, an exercise that is sometimes divided into two separate hearings in child cases. That said, in light of the wide ranging submissions and substantial evidence placed before the Court, including voluminous documentation and emails (a great deal of which has not been particularly helpful), I adopt the observations of Thorpe LJ in *Re F (Shared Residence Order)* [2003] EWCA Civ 592, [2003] 2 FLR 397, namely that one of the functions of the Judge is to make findings, but the Judge is to be selective and to make findings that are relevant and necessary for the disposal of the issue. Accordingly, when considering what orders would be in the best interests of Z at this time, I am not required to make findings on every area or issue that has been presented to me or which have become apparent during the hearing. I must determine the factual issues that have implications for the decisions that I have to take in relation to Z.

#### **Issues that Rise in Sexual Abuse Cases**

15. M's various child sex abuse allegations have become the core issue in the case and require a fact finding determination by the Court. Residence and contact disputes are emotionally charged and difficult for everyone involved. If there are allegations of abuse made in such proceedings, the complexity is invariably heightened. These cases are very



distressing for parents and children and are also very challenging for all of the professionals involved: Attorneys, Judges, Social Workers, Guardians ad Litem, Police and Mental Health Professionals.

16. Special care must be taken to assure the accuracy of the fact-finding process when allegations of child abuse are raised during a dispute over s.10 Children Law child arrangements. There is often an underlying suspicion that an accusation may be linked to the dispute. The Court must be cautious, as a significant number of allegations of child abuse made in the context of parental separation are unfounded. In some cases of untrue allegations of abuse, the accuser and even the child may be deliberately lying. However, it is more common for the accuser to honestly believe what they are alleging. Pre-existing distrust, poor communication, or hostility may result in the misunderstandings and unfounded allegations, especially in cases where the child involved is young and the allegations are reported through a parent. Some cases of unfounded allegations may be the product of the emotional disturbance of the accusing parent.
17. On the other hand, many abuse allegations made in this context are well founded. While there are legitimate concerns about the possibility that accusing parents or children may be lying, those who have abused children will often falsely deny or minimise their abuse. Abusers are only likely to admit their wrongdoing if confronted by irrefutable evidence.
18. In most cases there is no clear forensic evidence and there may be a large number of conflicting claims. Investigations of abuse allegations in this context are especially difficult because the parent who is alleged to have abused the child will often have



legitimate reasons for touching the child. The determination of whether a touching was 'sexual' requires an assessment of intent. It may be difficult for a person carrying out an assessment on the family or a Judge to later make that assessment. As illustrated by this case there is usually no conclusive physical evidence. Also there is often no valid psychological test or profile that can conclusively determine whether an accuser, an accused or a child is telling the truth about an allegation. At least in this case we have a thorough trauma assessment conducted by Dr. Lam<sup>5</sup>, upon which I will be commenting later herein.

19. There may be a number of different Mental Health Professionals and Social Workers involved in a case, with differing levels of expertise and conflicting opinion about the case. It may be very difficult to prove conclusively that abuse either did or did not occur. In practice criminal or child protection/child public law proceedings are most likely in cases where there is the clearest evidence of the more serious abuse, and there is less likelihood of a parental family law dispute reaching the trial stage. On the other hand, as in the matter before me, cases where there is more uncertainty of whether abuse occurred are most likely to be resolved in child private law proceedings.
20. I have the above summary<sup>6</sup> of the insightful observations made by Professor Nicholas Bala & John Schuman in their article "Allegations of Sexual Abuse when Parents have separated"<sup>7</sup> in mind when I consider the Court's function, its approach to this case and

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<sup>5</sup> The single joint expert, a child psychologist instructed to conduct an assessment - see paragraph 160 below.

<sup>6</sup> Paragraphs 16-19 herein.

<sup>7</sup> Canadian Family Law Quarterly 30 May 1999.



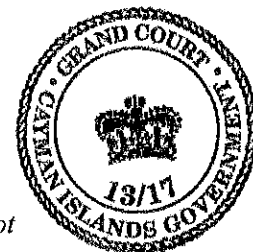
also when I consider the relevant Law in this matter and when applying it in the factual context.

### **Approach of the Courts when Dealing with Allegations of Sexual Abuse and Fact Finding**

21. MacDonald J in *AS v TH (False Allegations of Abuse)* [2016] EWHC 532 Fam set out the legal principles and guidance for Courts to adopt when determining the approach to this type of child proceeding. I find that they, and the other guidance set out in this section of this Judgment, are also highly relevant to similar cases in the Cayman Islands and I have considered and applied the same when determining the issues before me.
22. In relation to the burden and standard of proof and evidence, MacDonald, J made the following concise observations:

*"23. The burden of proving a fact is on the party asserting that fact. To prove the fact asserted that fact must be established on the balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. As has been observed, "Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities" (Re B [2008] UKHL 35 at [15]).*

*24. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)). Where the evidence of a child stands only as hearsay, the court weighing up that evidence has to take into account the fact that it was not subject to cross-examination (Re W (Children) (Abuse: Oral Evidence) [2010] 1 FLR 1485).*



25. If a court concludes that a witness has lied about one matter, it does not follow that he or she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure (*R v Lucas* [1981] QB 720).

26. The court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward has been made out on the balance of probabilities (*Re T* [2004] 2 FLR 838 at [33]).

27. There is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not (*Re B* [2008] UKHL 35 at [2]). However, failure to find a fact proved on the balance of probabilities does not equate without more to a finding that the allegation is false (*Re M (Children)* [2013] EWCA Civ 388).

28. In principle the approach to fact finding in private family proceedings between parents should be the same as the approach in care proceedings. However, as Baroness Hale cautioned in *Re B* at [29]:

"...there are specific risks to which the court must be alive. Allegations of abuse are not being made by a neutral and expert Local Authority which has nothing to gain by making them, but by a parent who is seeking to gain an advantage in the battle against the other parent. This does not mean that they are false but it does increase the risk of misinterpretation, exaggeration or downright fabrication."

29. Within this context, it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence, particularly where allegations of abuse arise in the context of private law disputes. The Best Practice Guidance of June 1997 Handbook of Best Practice in Children Act Cases Section 4, Annex para (k) cautions that:

"Any investigation which focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable or if the child's primary care taker is unreliable, particularly where the allegation emerges in bitterly contested section 8 proceedings."



23. In M's Closing Submissions, reference is made to Lord Nicholls' remarks concerning the burden of proof in *In re H and R (Minors) (Child Sexual Abuse: Standard of Proof)*: [1996] AC 563 at p586. Lord Nicholls there expressed the principle that:

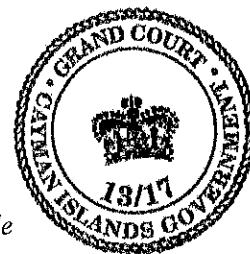
*"The more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes the allegation is established on the balance of probability."*

24. However, the principle espoused by Lord Nicholls is no longer applied. In *Y and E (Children) (Sexual Abuse Allegations), Re* [2019] EWCA Civ 206 Baker LJ stated at paragraphs 2-3:

*"2. ....For the last 10 years, however, since the decision of the House of Lords in Re B [2008] UKHL 35, judges have been enjoined to apply the civil standard of proof without qualification. The guiding principle was stated by Baroness Hale of Richmond at paragraph 70:*

*"I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies."*

*3. Not everyone is comfortable with this principle. Given the life-changing consequences of findings of sexual abuse within a family, there are some who advocate a higher standard of proof. The law, however, is clear – it is the unqualified civil standard of proof that must be applied. But many judges hearing these difficult cases find that the balance of probabilities is not always an easy standard to apply. In most cases, there will be no physical evidence of sexual abuse, and the evidence will often consist only of statements made by the child. Evaluating that evidence can be extremely challenging, especially where the child is very young, and/or if, as in most cases, he or she is not called to give evidence in court and therefore not subjected to cross-examination. Frequently,*



*there will be concerns that the child may have been influenced by other people when making the allegations, particularly if they arise in the context of disputes between parents. Unpicking what exactly the child said when and to whom, often through layers of hearsay, can be very difficult.”*

25. Therefore, the parent against whom the allegations are made, in this case F, does not have to prove anything. As a result of the Supreme Court's decision in *Re B* [2008] UKHL 35, the standard of proof in finding the facts necessary to establish any factual issue in the case<sup>8</sup> is the simple balance of probabilities, nothing more and nothing less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof in determining the facts.

26. When applying the legal principles and guidance to cases involving allegations of sexual abuse, MacDonald J added in *AS v TH (False Allegations of Abuse)*:

*“30. In accordance with the foregoing general principles, when assessing whether or not allegations of sexual abuse are proved to the requisite standard, the court should focus on all of the relevant evidence in the case, including that from the alleged perpetrator and family members (see Re I-A (Allegations of Sexual Abuse) [2012] 2 FLR 837).*

*31. The court should adopt a two stage process. First, is there evidence of sexual abuse? If so, is there evidence of the identity of the perpetrator (Re H (Minors); Re K (Minors)(Child Abuse: Evidence) [1989] 2 FLR 313 and Re H and R (Child Sexual Abuse: Standard of Proof) [1995] 1 FLR 643).”*

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<sup>8</sup> Including allegations of sexual abuse by a parent on a child.



27. The concluding guidance given by Holman J at the final paragraph of his ruling<sup>9</sup> in the public law matter of *Leeds City Council v X (Assessment of Sexual Abuse)* (2008) FLR 869 sets out the approach that should be followed when assessing allegations of child abuse:

*"I wish only to stress, as that document does at paragraphs 1.2 and 1.13, the very great importance of including in any assessment every aspect of a case. Very important indeed is the account of the child, considered, of course, in an age appropriate way. An express denial is no less an account than is a positive account of abuse. It is also, in my opinion, very important to take fully into account the account and demeanour of the parents, and an assessment of the family circumstances and general quality of the parenting. The medical assessment of physical signs of sexual abuse has a considerably subjective element, and unless there is clearly diagnostic evidence of abuse (e.g. the presence of semen or a foreign body internally) purely medical assessments and opinions should not be allowed to predominate."*

#### **The Allegations Made by M**

28. The majority of the allegations of sexual abuse made are rather vague. The allegations are not set out in a Scott Schedule or listed in a single document, but need to be located in and extracted from various parts of M's evidence. No criticism is made of the parties about the absence of a schedule, as no direction was made.
29. In summary, M's allegations are that on various occasions from the age of 6 months at least until supervised contact was put in place in 2019, F has sexually abused Z. Although not specifically stated, it appears that M is alleging that the abuse was by F improperly touching and penetrating Z's vagina and anus. It is unclear from M's evidence and her

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<sup>9</sup> At paragraph 143.



submissions whether that penetration is alleged to be digital or penile, or even both. In light of this, regard should be had to the following observations made by Holman J in *Leeds City Council v X*, a case in which allegations of penetration were made:

*"124. There are not, and cannot be, reliable statistics or data about the true prevalence of sexual abuse by parents, for reasons described in paragraphs 1.11 and 1.12 of the new Royal College document. But there is no data in that document, or of which I am aware, to undermine the proposition that a majority of parents in our society do not sexually abuse their children. The starting point must be that it is improbable that a parent of otherwise good character would sexually abuse, or has sexually abused, his or her child in the sort of deliberately penetrative way under consideration in this case. (Less serious forms of touching such as kissing or stroking the external genital area are not what is under consideration. If there has been abuse at all, it must clearly have involved deliberate penetration by a finger, penis or object of the vagina and/or the anus.)"*

I am satisfied that these observations made in relation to England and Wales are equally applicable in the Cayman Islands.

30. F denies every allegation made by M. There are no criminal proceedings as the Multi-Agency Safeguarding Hub ("MASH") and the Department of Children and Family Services ("DCFS") found there to be no evidence of child sexual abuse. I indicate at the outset that I have found none of the allegations made or findings sought by M to be proved.
31. It became evident at the hearing that F was not only seeking findings that each of the allegations made by M were false, but also that, if anything that Z has stated is being



considered as being potential disclosure by her of sexual abuse upon her by F, Z has been coached or influenced by M. I indicate at the outset that I have found that Z has not been sexually abused by F. I also find that the manner of questioning of Z by M on a number of occasions and the fear-promoting comments that M makes to Z amount to coaching.

32. M highlights that Z has since a very young age had a variety of medical complaints including bedwetting, soiling her underwear, rashes, a dilated anus, diarrhoea, soreness and redness to her vagina area and perineum. M states that these health issues occur only after Z has had contact with F. M contends that Z's health and "wellbeing" declined in 2018 when she was having more regular unsupervised contact with F and that it has greatly improved since unsupervised contact ceased. M states that the issues do not arise when Z is in her sole care and that this is a strong indicator that F has sexually abused Z due to the nature of the health issues.
33. Until late 2018/early 2019 M states that she was willing to consider that Z's medical conditions may have been caused by food allergies or by the care regime being provided by F when Z was with him. However, it appears that from late 2018/early 2019 M's view changed to a belief, which has hardened since then, that they all arose as a consequence of sexual abuse inflicted on Z by F. Having reached this conclusion M also believes, (a) due to things said by Z more recently, (b) due to her view that the medical issues do not arise when Z is in her care; and (c) due to her view that F has failed to adequately outline to her the details about the care regime he had in place for Z, that the earlier medical complaints were also as a consequence of child sexual abuse inflicted by F. With this in mind, M argues:



*"If (F) is unable or unwilling to identify the cause, then why should (Z) have to continue to be at risk of suffering future harm when the past year and a half has shown that, all else being equal with only the implementation of supervised access, the issues have not recurred and she is actually thriving."*

M commented that:

*"It is now my belief that the Petitioner did so<sup>10</sup> to mask the true cause of the diarrhoea and issues in (Z's) private parts."*

Then M added:

*"Why else would any responsible parent knowingly do that to a child?"*

34. Despite the more general assertions of child sexual abuse occurring up to the close of 2018 in her oral evidence, it appears from M's evidence that the below are the occasions upon which she asserts with a degree of specificity that it occurred during the pre-2019 period. It is those more specific allegations outlined below that I must consider and not the general assertions:

- (i) When Z was 6 months old, shortly before 22 July 2013. M said that this was at a time when F was living in the family home and Z was being exclusively breastfed. M said that she noted that there was blood in Z's diaper. Dr. Robertson recorded in his notes that there was *"blood in a stool"*. M stated in her oral evidence that she was *"asking the Court to determine whether on this occasion there was sexual abuse"*. M added, after it had been put to her that Dr. Robertson's medical records did not support a contention of sexual abuse, that *"he did not look at the diaper region"* and *"he did not look at her private parts"*.

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<sup>10</sup> When referring to her concern that F was providing Z with food that caused her health problems.



(ii) Shortly before 23 October 2014 when Z was 16 months old. Dr. Chen's notes record that the history presented to her at the time was that (a) Z had been "*grapping (sic.) privates*" for the previous 2 days and that was still ongoing and (b) that the area around Z's private parts had looked a little red two days previous, but were looking better and that there was no discharge. Dr. Chen noted that Z's hymen was intact and that Z had "*mild erythema perianally and at introitus, no satellite lesions*". M states that F had bath duty on the night that the issue arose, although she stated in an email to Dr. Robertson that F had told her that "*he might have gotten lotion on her girly bits or that she plays with herself occasionally and she had lotion on her fingers and it was irritating her*".

M now contends that research states that mild erythema is present in 30 percent of child sex abuse cases and that it was unusual for Z to get nappy rash, and as a consequence she again said in her oral evidence that she was "*asking the Court to determine whether, on this occasion there was sexual abuse*".

When it was put to M that there was no evidence to suggest child sex abuse on this occasion she replied: "*In the majority of cases there are no physical markers, absence 85% to 95%*".

(iii) When Z was 2 years and 1 month old, shortly before 10 July 2015. Z had changed her school in the previous week. Over the next week Z started wetting herself, both when she was asleep and awake. It was reported to the doctor that Z had a watery stool, that her stools were softer than usual and that she had not liked using the 'potty' for 2 to 3 weeks. Dr. Chen recorded in her notes that Z had mild erythema. M indicated that Z had unsupervised contact with F on 6



July 2015. M contended that diarrhoea and bedwetting are signs of anxiety and that erythema is consistent with child sexual abuse by F. In her oral evidence she stated that she was *"now thinking that this is another occasion of sexual abuse, it must be 35% child abuse cases where erythema is present"* adding that *"erythema is a result of trauma and I can say that (there was) no trauma in my care of her private parts"*.

It was pointed out to M during cross-examination that the contact had taken place on a boat trip to Stingray City with three other people being present, to which she replied that it may have happened during the car trip and that the other persons were not there for *"every second of the time"*.

- (iv) Shortly before 23 February 2016, when Z was 2 years and 8 months old. It was reported to Dr. Robertson that blood was seen when wiping Z's bottom and that M saw a cut on Z's bottom – anterior. Dr. Robertson's notes indicated that there were no known allergies at the time, that there was an anal fissure and he prescribed lactulose to keep stools regular. There appears to be no link that could be drawn by M to contact occurring between Z and F and this medical issue, save for M stating that *"on access days her dad usually handled bath and bedtime duties"*. This was at a time when contact was erratic and taking place in the presence of M.
- (v) When Z was 2 years and 10 months old, shortly before 20 April 2016. It was reported to Dr. Chen that Z had diarrhoea for three days, and that there was blood and it was *"mucousy"*. The doctor was informed that Z had a fever and had vomited on the night before and had a little tummy ache. Dr Chen's notes indicate that she felt that it might have been gastroenteritis. M stated that this



medical issue arose after contact which had taken place with F at her home, but she said she may have been in another room, adding that in such circumstances *"If you are not a sexual abuser you would not take this opportunity, if you are one you would take this opportunity"*. M stated that the notes recorded that *"stools, bloody and mucousy"*. M's belief is that this was due to child sexual abuse by F. M seemed to try to disregard the fact that Z had a fever which is not consistent with child sex abuse, but is consistent with the wider symptoms and diagnosis.

When it was put to M in cross-examination that it might be gastroenteritis, she stated that: *"It could (be), but I also know it is sex abuse as well for blood in stool. I have been open to other explanations. I go through the exercise retrospectively. I know the access is distinct and that the only issues (are) after time with father having contact. It is possible that gastroenteritis, as child sex abuse is also possible"*.

- (vi) On or around 20 May 2016, when Z was 2 years and 11 months old. M said that Z had contact with F on 16 May 2016. M had sent a message at the time saying that Z's *"peepee hurting"* and that it was *"quite red"*. It is clear that F was concerned about Z after receiving that message from M, because on 20 May 2016 he messaged M from Zürich, where he had been working since 17 May 2016, to enquire about how Z was. There was no medical evidence about Z's medical condition on this date. It appears that M is contending that the condition is evidence that F had sexually abused Z during a contact session, at which she would have been present, prior to his departure to Zürich.



(vii) When Z was 3 years and 5 months old, around 16 November 2016. Z was taken to see Dr. Sara Watkin as a new patient. Dr. Watkin was informed that Z had vomited on the previous Wednesday at her school and again on the last Wednesday. The doctor was also informed that there had been two recent episodes of bedwetting. M informed the Court that F had been travelling between the Cayman Islands and Bahamas during this period and that she had at the time not considered whether F was going to see Z at school. M seems to infer that Z's ailments were caused by sexual abuse by F, possibly when she says he attended the school to see Z without her knowledge, but M appeared to be doing so with little conviction about this occasion.

(viii) When Z was 3 years and 7 months old, around 20 January 2017. M presented to the Court a photograph in which Z was cuddling and nestling up to her chin. In the photograph M is smiling and so is F. M states that the picture, which was taken at Z's school, shows anxiety in Z in F's presence.

On my review of the photograph, it can be characterised as one depicting a happy family. M's unjustified negative interpretation of what the photograph depicts is indicative of M's approach to this case in which she is unable to take a balanced view and unwilling to even consider that what is depicted or that Z's actions could have a positive or innocent interpretation.

(ix) When Z was 3 years and 9 months old, around 14 April 2017. Z was seen by Dr. Maylor. M informed the doctor that Z had been itching her buttocks, which were red. Dr. Maylor's diagnosis was that Z had candidiasis (thrush). M said that F had just had access to Z when the redness and itchiness were observed. M seems to again infer that Z's ailments were caused by sexual abuse inflicted



by F somewhere in Camana Bay when there was contact at which she may have been present.

M relies on a photograph in which Z has a serious face and is sitting on F's shoulders. Unfortunately, M fails to acknowledge that there were other photographs in that series of photographs which show Z as a happy and relaxed child enjoying being carried on F's shoulders. This is another instance of M selectively tailoring the evidence in such a way as to support a contention that there is sexual abuse, and by doing so inaccurately portraying the circumstances. It is also possible that on this occasion the redness and itching commenced on the days leading up to F's contact visit.

- (x) When Z was 4 years and 4 months old, around 11 October 2017. M highlighted a message she sent to F in which she talked about changes to Z's diet which she had made as she was concerned because Z's "*girly bits hurt*". F was still living in the Bahamas at the time and there is no evidence that F had seen Z at this time. Again rather concerningly, without any evidential basis to back up such an assertion, M states: "*If (F) was on Island, it is quite possible he had access during (Z's) school day without my knowledge*". M's inference being that if F was visiting the Cayman Islands he took that opportunity to abuse Z, thereby causing the pain she was experiencing to her private parts.

M's unjustified assertion is illustrative of M's 'tunnel vision' approach to this case and present inability and unwillingness to consider that other factors may be causing the medical issues.

- (xi) When Z was 4 years and 4 months old, around 16 and 17 October 2017. M highlighted in messages that Z's "*girly bits red again*" and that they were



"*still a bit sore*". F was still living in the Bahamas at the time and there is no evidence that F had seen Z at this time. Again rather concerning, without any evidential basis to back up such an assertion, M states: "*F could have had access during this time without my knowledge*" if he had attended Z's school. M's inference again being that if F was visiting the Cayman Islands he took that opportunity to abuse Z, thereby causing the soreness she was experiencing to her private parts.

M's unjustified assertion is again indicative of M's 'tunnel vision' approach to this case.

- (xii) When Z was 4 years and 6 months old, around 18 December 2018. M highlights messages between F and herself when Z returned after unsupervised contact with F with a rash on her bottom and private parts. She said that F had told her that Z had spent a long time playing in a swimming pool which could have been the cause. M stated that F's explanation "*did not sit well with her*" and she "*discounted*" it. It appears that M is contending that the rash is evidence that F had sexually abused Z during the contact session.
- (xiii) When Z was 4 years and 8 months old, 4 February 2018. M highlights messages from F to her concerning unsupervised contact he had with Z on 4 February 2018. In the message M states that she noticed upon Z's return to her that her "*girly bits front and back are red and sore*". It appears that M is contending that Z's redness and soreness is evidence that F had sexually abused Z during the contact session.
- (xiv) When Z was 5 years and 3 months old, on 12 September 2018. M highlights a message exchange between herself and F sent after Z was returned to her care



on that day following overnight contact with F. M noted in the message that Z's "underwear had pooh in it when she went to change for swimming and her bum was red and sore". M stated that at the time: "Sadly I was still only thinking along the lines of food as a possible cause". It appears that M is now contending that Z's soiling her underwear and red/sore bottom is evidence that F had sexually abused Z during the contact session.

- (xv) When Z was 5 years and 6 months old, around 14 December 2018, Z had unsupervised staying contact with F from the evening of 7 December 2018 until the morning on 13 December 2018. M noted that Z returned in "extreme pain" with a "raw and red genital area both front and back". M contacted F by email on 13 December 2018 to ask him what he thought had caused it and why he thought it did not happen when Z was staying with M. On 14 December 2018 F replied that he did not know, but added that Z had eaten a lot of apples and some gummy sweets. M took Z to Dr. Watkin on 14 December 2018. Dr. Watkin in a letter to DCFS stated that Z presented to her "with a very sore perineum". Dr. Watkin said M had told her that she was treating it with Aquaphor causing the redness to decrease. Dr. Watkin said that M informed her that, on the day before coming into see her, Z's bottom was itchy, that it was hurting Z when she passed urine and that Z had one episode of bedwetting. The doctor recorded that upon examination (a) Z had a red perineum; (b) there was no discharge and (c) Z had a mildly dilated anus. The doctor's notes state that she found the probable cause to be pinworm. In an undated letter sent to Carol Robinson, Dr. Watkin stated the same findings and went on to say that, although no pinworm was seen, the "most likely problem was a pinworm". In



the same letter Dr. Watkin added that: "*We swabbed the rash for streptococcus, which was negative, the urine dipstick was negative, implying that there was no urine infection*". M does not now accept the pinworm diagnosis, as an exhibited pinworm test taken on 28 December was negative and the school informed her in an exhibited email that since July 2016 there had never been a case of pinworm at the school. It appears that M is contending that the medical issues are evidence that F had sexually abused Z during the December contact session.

35. At no time prior to January 2019 was the possibility of or a concern about Z's medical issues being caused by sexual abuse raised by M or by any doctor or safeguarding professional such as a teacher. When looked at individually the evidence relied upon by M could not possibly establish on the balance of probabilities that F, or anyone else, sexually abused Z on the occasions raised during that period of time.
  
36. M's case is that one should not look at each of the above in isolation, but that that each of the above incidents should be considered in the context of what has happened since January 2019, to include what Z told M and what has arisen during Z's interaction with and treatment by Dr. Brown. M is also of the view, incorrectly held on the evidence that she has been able to present, that every incident concerning ailments to Z's anus, perineum and vagina are exclusively linked/correlate to occasions when Z had contact with F. In his affidavit dated 21 February 2019, F exhibits a number of messages between the parties which refer to an ongoing issue in relation to redness and soreness in Z's genital area, some of which go back to 2016 when Z was in M's care. M highlights that



some of the messages were at the time when Z was having contact with F in 2018 and denies that the other instances were due to her care or in fact occurred while Z was in her care. I note that in her email to F, dated 18 January 2019, M stated that it was the second instance of returning from his home with a red and sore genital area.

37. In relation to each of the above 'incidents' M adamantly refuses to now consider any causal reason other than sexual abuse by F for the medical issues, even if they are a more likely cause or diagnosed as being the probable cause by a doctor. The stance taken by M in relation to these pre-2019 allegations, and in fact to the case as a whole, is consistent with a finding that M is a parent who is absolutely convinced that sexual abuse has been inflicted upon her child by the other parent, and who then goes on to tailor or focus on the evidence in a 'tunnel vision' manner to support such a contention, while disregarding any evidence or feasible explanation to the contrary. From late December 2018/January 2019 it was evident that M became pre-occupied with finding material to support her belief that there had been sexual abuse. She characterised her approach in the following way:

*"As an auditor when a manager presents a report we do not take it at face value we look at control and risks. Are there the right parameters, is reporting top the right standards."*

M's overly academic and analytical approach and reasoning applied to this case derived from the practices she has developed and mastered in her professional life, do not convert well when considering such sensitive child family law issues in which family dynamics and emotions come into play.



### **Procedural and Factual Background**

38. When considering the allegations of sexual abuse made as well as alleged to have occurred in 2019, one has to look at both the procedural and factual background, including the timing of them being made, to put them into context. Regrettably a rather laborious and lengthy exercise is required and I will approach this in chronological order under speared sub headings.

### **Background - Z's Early Years**

39. It is clear that this is a case in which M throughout has had little faith in F's ability to care for Z coupled with her perceived need to control F's interaction with Z. This resulted in her imposing unusual and, to a degree, unnatural restrictions on the type of contact Z could enjoy with F. This meant that for a number of years she had to be present at contact. It was F's concern about M's belief that she should be present at contact that led to his insistence that the Consent Order specify that contact be unsupervised. For a period of time, when M was not present, she allowed F to remain in the home to look after Z, but only on the condition that she left the security alarm on. The reason given for this was that she was concerned that F may remove documentation from the household if he and Z were not "*alarmed in*". Although mothers may attend and assist fathers by attending contact with their child especially under the age of one, M felt that she should still be in attendance at contact past that age because she felt Z was so young and unable to communicate for herself. It was only after Z was potty-trained that M said that she felt more comfortable and allowed unsupervised contact because Z was able to "*open a refrigerator herself and articulate her needs in relation to hunger*".



40. M added that the contact was supervised because Z resisted unsupervised contact. She criticises F as she says he *"kept insisting on sole access"*, although it is the type of arrangement in developing a healthy and natural parent /child relationship that one would expect to be put in place. M seeks to justify her stance on the basis that Z *"always asked that I remain with her"* and her view expressed to F that *"for a child to feel safe and secure that consistency was required"*. M actually felt that it was a commendable *"compromise"* by her to maintain her distance during contact so as not to be *"in earshot"* or always in the *"line of vision"*. This is not a compromise, it is a way for M to retain control of contact and it did not allow Z or F to act in and develop their relationship in a natural and relaxed manner.
41. There is no independent or convincing evidence of this purported reluctance from Z. The independent observation evidence of those who have assessed F and Z together away from M's supervisory watch, albeit not in Z's early years, have seen no reticence in Z. In fact, the observations have been positive and showed Z embracing the opportunity to spend time with her father. I have heard from F's new wife, whom F married in September 2018 after a relationship that commenced in late 2015, and I found her to be a most impressive witness who clearly loves Z and has Z's best interests in mind. In Z's best interests she has assisted greatly with contact arrangements during these protracted proceedings and has been a stabilising figure throughout. I accept she may, in exasperation, have referred to M as being *"crazy"* at one exchange where M was shouting in a public place after both F and M may have been at blame for tension increasing, but she has clearly been a welcome dynamic in this wider family and been a commendable support for F at a time when the pressure on their relationship caused by



these allegations would have been substantial. F's wife's observations about contact which she has had to supervise portray a wonderfully natural, relaxed and playful relationship between F and Z, as well as a loving and appropriate relationship between Z and herself. I accept her evidence in this regard. The recent developing issue about Z's anxiety arising when F's wife leaves the room during supervised contact is something I will speak to later herein. It is concerning that the reasons for Z's hypervigilance likely arise due to (i) Z being influenced by M's anxiety which M openly shares with Z, (ii) the instructions being given to Z by M relating to contact sessions, and (iii) the uncomfortable questioning of Z by M about such interaction after contact. Z is a bright child and clearly does not want to say or do anything that may upset M by acting in a manner that is inconsistent with what she perceives M's wishes to be.

42. Although M states that she felt that Z should have a relationship with F, it is clear that this would have to be on her terms and contact of the type that she approved of. M was over-protective of Z in her former years, characterised by her unwillingness to allow a normal and natural relationship to develop between Z and F. This over-protective approach moved to a higher level from January 2019, when M realised that a new order imposed by the Court, if it was along the lines sought by F, would result in her losing the ultimate control she had thereto enjoyed in relation to how Z utilises her time, including with whom she spent it. I accept that, to her credit, M on occasion changed her personal arrangements on short notice on occasion to facilitate contact, but this does not deflect from the fact that if she did not want contact to take place, then it would not happen.



43. The impression given to the Court by M during the course of the proceedings, from what she has said in her oral and written evidence and from her demeanour, is that she was emotionally affected by the breakdown in her marriage with F. I note that during the time of the divorce, Dr. Watkin had recommended that M seek counselling support on a couple of occasions. Dr. Lam also noted that M, during the interview, spoke about the alleged affairs, the circumstances on the separation and that on a few occasions "*she seemed invested in illustrating the downfall of F and the stories of his past*". I accept that M told the Court she had moved on since the divorce, including having a new partner for about a year, but it is evident that she still harbours a strong feeling of injustice and anger due to the way that she feels F's actions caused the marital breakdown. This may be because she believed that F was seeing his former girlfriend or other women at the time, it may be because she perceived it as being a physically and emotionally abusive relationship. Although M is an intellectually gifted and articulate individual, she does appear to have an emotional vulnerability and it is evident that her relationship with Z is of paramount importance to her stability. She relies upon that relationship for her own well-being and, as she understandably stated to this Court, she would be truly devastated if a change in the current child arrangements was ordered as Z is her "*world*".

**Background - From July 2018 until Dr Watkin's Involvement on 10 January 2019**

44. After F's return to the Cayman Islands in July 2018, for around two months what may be termed a more normal contact arrangement developed. Rather unusually, having regard to the fact that the parties had been separated for a number of years, were divorced and ancillary relief proceedings concluded, was the fact that when negotiating contact



arrangements M deemed it appropriate to inquire of F why he was returning to the Cayman Islands therein asking him:

*"Were you fired? Or resigned at (name) request? Or are you under any kind of investigation of something. Or a law suit?"*

45. The contact between August and November is set out in Exhibit JC1 of M's affidavit sworn on 20 February 2019. As mentioned in paragraph 4 herein, both parties have different views as to how well that arrangement worked and how it should be developed.
46. Matters deteriorated towards the end of 2018 and really came to a head in early 2019. M sought to take Z for Christmas to stay with her family overseas and she asked that F give her Z's UK passport which he had in his possession. F informed M that he felt that he need not provide her with that passport as he mistakenly believed that M already had Z's Canadian passport in her possession and he had indicated that he would provide her with the Caymanian passport. F attached a condition, namely for the return of family photographs to him, before he would provide the Caymanian passport. This was rather unfortunate, as it fueled the tension and mistrust between the parties which escalated into the New Year. M informed F that she had referred the passport dispute to the police, who then intervened and took no action. M travelled with Z to Canada for Christmas as planned after the Canadian passport was returned to M via counsel.
47. Around this time F was concerned about restrictions he felt were being placed on his contact with Z. In September 2018 F had reached out to M to obtain her permission and a written travel authority for Z to travel with him in October. F criticises M for not indicating her consent to travel until very close to the proposed travel date. M criticises F



for failing to provide her with the travel details until very close to the proposed travel date. From the evidence it appears that, to a degree, they were both at fault, and the circumstances are one of the illustrations of the breakdown of the brief period of some cooperation between them which commenced around August 2018.

48. F inquired about additional contact time being made available to him prior to Z's extended overseas Christmas break with M. These arrangements could not be agreed, each party alleging that last minute decisions were being made by the other. As a consequence of M's actions surrounding the passport and due to the contact issues, F sought legal advice. He gave the Caymanian passport to his attorneys for delivery to M<sup>11</sup>. F decided not to file his application to revise the contact arrangement until January 2019 due to M and Z's being overseas over Christmas.
49. It was clear that by early December 2018 the parents were having issues about contact for Z and in relation to their communications with each other. At this time, and in the context of the parties' decreasing ability to exercise their parental responsibility in a uniform and positive manner, M's expressed concerns about F's care for Z and for Z's health following contact with F were in an elevated state. This was particularly so after Z's overnight staying contact with F from 7-13 December 2018 and M's attendance with Z at Dr. Watkin's surgery on 14 December 2018.<sup>12</sup> She said that she had taken Z to the surgery because, due to the lack of F's ability to give her a clear indication of why these

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<sup>11</sup> M's then attorneys, Samson & McGrath, were notified about that in a letter from F's attorneys dated 7 December 2018.

<sup>12</sup> See paragraph 34 (xv) above which contains details about M's concerns about Z's medical condition at the time and about Dr. Watkin's medical assessment of the same.



health conditions were occurring, *"she wished to commence documenting the issue with (Z's) doctor"*.

50. M stated that food issues had been a *"recurring theme"* because she felt that F repeatedly fed Z with certain food despite M telling him that she thought it might be causing her diarrhoea or allergies in her private parts.
51. On 3 January 2019 F sent a reasonable email to M seeking information from her about Z's diet, Z's sleeping arrangements, Z's household chores, Z's personal hygiene and child care arrangements. The making of this request for information and for M's input were appropriate and is often a recommended approach which aids consistency of care for a child where parents are separated. It is also often a way to reduce tensions between parents which sometimes arise when a parent shows disinterest in the parenting methods used by the other parent, especially if the other parent is the primary carer.
52. In the email F also asked for confirmation that he would be picking Z up from school on the following day and returning her to school on Monday, 7 January 2019. F also set out suggested contact arrangements up until the end of April, including detail about the agreement for Z to travel with F on a ski trip to the USA during her March half term. That agreed trip had already been booked and paid for by F.
53. M's response in her email on 4 January 2019 was not particularly helpful and the tenor unnecessarily hostile. It is evident from that email that M felt that arrangements for contact between Z and her father should revolve around her and M's commitments. The



basis for this was that she felt that she and F did "not have an agreed schedule for access as yet". This was at a time when M had recently enjoyed and returned from an extended overseas trip over Christmas which F had sensitively consented to. Even if M thought that F's request was made late in the day, in such circumstances, one might have reasonably expected more flexibility from her on this occasion. M also withdrew her previously granted consent for Z to travel to the USA. It does appear from the content of M's email that M did this to punish F for the stance he had taken on the passport and for the inconvenience and cost that had caused her. That was not a good reason, and appeared to be a regrettable non-child centric 'tit for tat' approach. Despite the fact that M indicated that F could instead have contact with Z during that week, presumably in the Cayman Islands, her reasons for unilaterally varying an agreed contact arrangement were unmeritorious. M's actions were, significantly at a time when F was seeking to advance and regularise the same, a further indication about her approach to contact arrangements and her desire for them to be on her terms.

54. In the 4 January 2019 email, M's response to F's request for input about suitable child care arrangements was dismissive. M refused to provide that information as she required F to summarise what was happening in his household to enable her to review the same to see what might be causing the medical issues. M failed to recognise the benefits that arise when there consistent care regimes are put in place in each household, and that the best person to initially share such detail is the primary carer parent. M failed to see the benefits that consistent care arrangements between each household could provide, something that F's request was seeking to achieve. M did express a valid concern that in the past she had provided lists about food which she felt had been disregarded. However,



F's actions in reply to M's request in light of his email of 3 January 2019 does not amount to "a flat out refusal" to cooperate with M<sup>13</sup> and does not justify M's view that F was a parent who did "not want to stop their child from suffering needlessly". It is an unjustified quantum leap for M to conclude that:

*"If (F) was not being cooperative, either he doesn't care about (Z) in which case abuse becomes even likelier, or he wanted to leave the cause unknown so that there could remain opportunities for it to recur which is also abusive".*

It is clear that it was around this time in January 2019 when M was starting her analytical/evidence gathering approach, which commenced in earnest in mid-January, namely to rule out previously held possible causes to provide support to her belief that Z's medical conditions were not caused by food allergies but by F abusing Z.

55. On 9 January 2019 F's attorney wrote to M's then attorneys to set up a time sharing schedule for Z "to better define shared parenting for (Z)". The request was made at this stage because the holidays had come to an end and F had clearly permanently relocated back to Cayman. The request was for (i) alternate weekend staying contact from after school or from 5:00 PM on Friday until 9:00 AM or drop-off Monday morning at school; (ii) Wednesday afternoon contact after school or from 5:00 PM until drop-off at school/or 9:00 AM on Thursday, and (iii) on a non-weekend contact week, contact from Wednesday evening until Thursday morning. The proposals also covered wider contact arrangements for the school holidays and special occasions. In the correspondence the fact that F had parental responsibility and what that means was highlighted, as concerns

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<sup>13</sup> Paragraph 30 M's affidavit sworn on 11 March 2020.



were expressed that M was not providing F with details about issues such as Z's health and her travel arrangements.

**Background from Dr. Watkin's Involvement on 10 January 2019 until F Issued Proceedings on 6 February 2019**

56. Interestingly in light of the fact that it was at the same that F was making it clear that he felt it was in Z's best interest to have more frequent and regularised contact with him, on 10 January 2019 (which was the day after the letter from F's attorney about contact) M attended, without Z, Dr. Watkin's surgery without an appointment. This was the first occasion that M had mentioned to the doctor a concern about sexual abuse. Dr. Watkin is an experienced Consultant Paediatrician with the required training in child safeguarding, but she has limited child sexual abuse expertise. Dr. Watkin informed the Court that Z's matter is "*the first possible sexual abuse case*" she had been involved in the Cayman Islands. Dr. Watkin also said that M told her that as F was pressing for contact she wanted reassurance that the redness was not the result of sexual abuse. The fact that M is linking the issue of abuse at a time that F is seeking to finalise and develop contact is of note when one has regard to the timing of later sexual abuse referral shortly before or after significant stages of these proceedings.

57. Dr. Watkin's notes recorded: "*Mum worried re sexual abuse*". At paragraph 11 in her first affidavit M stated that she went to see the doctor because "*It was about the possibility of the symptoms observed when I last brought (Z) in in December, could have resulted from sexual abuse*". In an email sent to Carol Robinson on 29 January 2019 she stated: "*(M) told me she had been worrying that (Z) might have been abused by (F)*". The note reflected that the doctor was aware that there were "*difficulties over*



*custody/financial arrangements*” and in a later and undated letter to Carol Robinson, she mentioned that she was aware that there was a “*dispute over access*”. The doctor’s advice, recorded in her notes and in the email, was that there “*was nil to suggest sexual abuse*”. In the email Dr. Watkin also stated that she had at the time felt that “*there was no indication to suggest (Z) should not be allowed to go to her father’s*” and that she suggested that “*(Z) should be allowed to go to F’s as planned*”. Dr. Watkin mentioned in the letter and throughout her oral evidence that she was not an expert in child sexual abuse and correctly opined that a specialist in the field would be required if such a diagnosis was to be properly made.

58. On 11 January 2019 at 1:03 PM F wrote to M asking when he could next see Z, stating that he had not heard back from M about contact despite her last communication in which she told him she would look at proposed dates and revert. At 1:54 PM, M replied that she had not responded to F’s emails as she had received a letter from his attorneys and was therefore of the view that those had superseded the emails. In this regard I note that her attorney made written proposals for contact on M’s behalf on that same day. However, the real reason for not replying was more likely to be that she had already formed the belief as expressed to Dr. Watkin on 10 January 2019 or that she intended to argue that F might be sexually abusing Z. M asked in her email whether F was available to pick Z up from school that afternoon. F replied by email at 2:44 PM complaining about being given short notice about the contact. This exchange is illustrative of the parents’ communication difficulties and their inability to make contact arrangements themselves in an organised fashion. It seemed inevitable that this would now have to involve both attorneys.



59. M's attorneys, presumably on instructions, replied to F's attorneys in a letter sent on 11 January 2019. Proposals were made for contact between Z and F for a six-month period with a review at the end of June 2019 on the condition that, if F was not able to collect Z or care for her during his period of contact, Z would remain with M. It appeared that M sensibly had agreed to alternate weekend contact on Friday until Monday morning and contact each Wednesday during school term from after school until Thursday morning. It appeared that M had sensitively agreed that F could have overnight contact with Z on 18 January 2019 as that was F's birthday. Alternate Thursday night contact was not agreed by M and M was unable to "*allocate specific holidays*" as she was not certain of her holiday plans. This was a positive letter, containing appropriate suggestions for at least the regular contact cycle. It is interesting to note that this was sent after M had raised the concern of sexual abuse with Dr. Watkin. This concern was either apparently not shared by M with her attorneys or they advised her there was a lack of evidence to support such a contention as it was not mentioned in their letter, nor was it mentioned to F in M's email to him.
60. Contact then took place on 16 January 2019. Z was returned by F after overnight contact on the morning of Thursday, 17 January 2019. Z spent that evening at M's home and was well enough and able to go to school on the morning of Friday, 18 January 2019. I note that on the evening of 17 January Z enjoyed playing on her new bicycle with a friend in the presence of M. However, M says that later that evening she noticed Z wince when she was wiping her. M said that she applied cream and she took photographs of Z's private parts, some of which were intrusive as they were of the inside of Z's vagina with Z opening her legs. It was evident when M gave her oral evidence that she had no degree of



understanding about why her taking such photographs would be unsettling for a child. I am satisfied that one of the reasons why those photographs were taken was because M believed that they may provide evidential support for a contention that or to build a case that that there had been sexual abuse and strengthen her position in any children proceedings brought by F. M said that Z started crying and that due to her empathy for her daughter she said she also started crying. It is not clear whether this was before or after any intrusive photographs were taken by M. M said she would frequently cry in Z's presence when she felt Z was upset or unwell. I note Dr. Lam's concern that Z picks up on M's anxiety.

61. On 18 January 2019 M took Z to see Dr. Watkin. The doctor's notes reflect that she was informed that Z had been with F from Friday morning until Monday evening and also on the Wednesday night on 16 January and that M told the doctor that Z had a sore bottom which she had "*flagged with her lawyer*". Her notes reflect about Z "*cannot remember anything about daddy... showers at daddy's... daddy cleans her bottom with his hand ... now saying with a puff ... puts soap on .. Doesn't hurt or sting ... doesn't remember of being at daddy's house... unable to say anything about what happens at daddy's but does not happen at mummy's*". The notes also recorded that there were "*no pee accidents*", "*no abnormal discharge*" and "*went cycling for the first time yesterday*". She noted: "*perineum (i) anus slightly dilated on examination, (ii) slight redness around on surrounding skin, (iii) no fissure (iv) perineum itself less chapped than yesterday - generally a little red around Vulva. Hymen intact. Small 2mm central orifice - smooth border - no discharge - pants not smelly*". In the notes the doctor again emphasised to M that she was not an expert and told her to contact "*social services*".



62. In her email to Carol Robinson sent on 29 January 2020, Dr. Watkin stated that:

*“(Z) could not tell me how the bottom had become sore and would not talk about her time at her daddy’s house. In addition to having been at her father’s, on the evening she came home she had spent time riding a new bicycle whilst wearing jeans. I raised the possibility that this might also have caused her sore bottom with mum.” [My emphasis by underlining]*

63. On 18 January 2019 at 1:52 PM F’s attorneys emailed a letter in reply to M’s attorneys. In that letter, F broadly accepted the terms of the contact suggested by M in her attorneys’ 11 January 2019 letter, but he still did not accept the 5 month limit and wanted to agree holiday contact. It was suggested by F that his wife should be involved in the collection, return and supervision of Z during contact. The letter also reiterated the importance of the parents sharing information about Z’s routines and her care needs. Therefore, to the parties’ credit, with the assistance of their attorneys, it seemed as if agreement had been reached about a contact schedule for the next 6 months.

64. At 2:33 PM, only forty-one minutes after F’s attorneys’ letter was sent, M transmitted an email directly to F and copied it to her attorney. She did that despite her email on 11 January 2019 in which she had inferred that she felt that it was the attorneys who were now dealing with contact issues. In that email she stated:

*“(Z) has had a second instance of returning from your home with a red and sore genital area. I’ve spoken to you a number of times on this point in the past, and come 13 December 2018 I even wrote an email to you that came back with a vague non-answer. On 3 January 2019 you wrote an email requesting a lot of information on what I do with (Z) in what I thought was your attempt to address the issue and when I reverted to saying as the issue is occurring while at your home and in your care as she spends less time with you it is easier for you to*



*summarize everything you do and feed her and are proposing so I can confirm whether it is consistent with what I do or contrary to what I do and would help to identify the issue faster – and I note that all I have gotten from you is silence on the matter. Given the lack of transparency in the care she is being given, the questionable nature of the issue, and potential negative risks associated with it, I have made a unilateral decision to retract my authorization for contact until I can be reasonably assured of Z's welfare while in your care."*

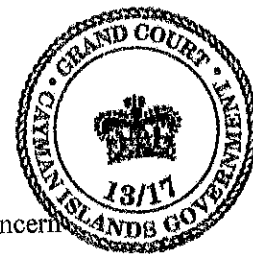
65. As a consequence, the recently agreed contact which was due to take place that very afternoon, on the eve of F's birthday, with F collecting the child could not take place. The timing of the email so soon after F had shown flexibility by agreeing to accept a contact arrangement proposed by M on 11 January 2019, which was less than the level of contact he had originally been seeking, and in light of the fact that Z was fit enough to attend school on that same day, raises concerns about the validity of the justification relied upon by M for her unilateral cessation of contact.
66. Upon receipt of a copy of M's email on 18 January 2019, F's attorneys promptly wrote to M's attorneys to see if contact could be restored. F's evidence is that, although M did not fully share Z's medical records with him at that time, he believed that Z historically had an allergy which could cause her genital area to become irritated. F was of the view that the first time that the issues arose was when Z was in M's care.
67. On 21 January 2019 M emailed F directly and reiterated that she has "*sole residency rights*" in relation to Z. Despite the content in the Consent Order, M failed to recognise that F also had parental responsibility. M stated that her view was that paragraph 3 of the Consent Order meant that F "*is only to have unsupervised contact*" with Z at times and



dates agreed between them both. She added that as there was no agreement in place and that F *"is not to have contact to (Z) until such time as (her) consent is provided... or alternatively a court order is obtained to the contrary"*. On the same day she emailed Z's school and instructed as follows:

*"Please find attached a copy of the redacted court order in place in connection with (Z). I confirm that I have sole residence rights in connection with (Z) pursuant to Clause 1. Pursuant to clause 3, (F) is to only have unsupervised contact with (Z) at times and dates to be mutually agreed between himself and myself. I note that currently we have no such agreement in place and (F) is not to have access to (Z) until such time as my consent is provided (which I will notify the school directly as I am doing now) or alternatively, the court order is obtained to the contrary."*

68. It appears that M was misapplying the purpose of or intention behind paragraph 3 of the Consent Order, which provided that contact would take place at times and dates mutually agreed via email between the parties, to mean that she could unilaterally cease contact without making an application to the Court. The intention behind the contact provision was to make clear that F should have unsupervised contact with Z and that the parties are expected to sensibly make those flexible arrangements. The intention was not to empower M to be the party who dictated whether or not contact could take place. The effect of M's actions amounted to disregarding a fairly standard flexible contact order and, relying upon the Consent Order provision as her justification, unilaterally replacing it with a no contact arrangement which clearly was not the intention behind or the meaning of the provision in the Consent Order. The wording in M's email exchanges provide a further indication of her view that she was in control of contact and that contact should take place on her terms and that it would only take place if she permitted it.



69. On 22 January 2019 F's attorneys again wrote to M's attorneys highlighting F's concern about the further email correspondence sent over the weekend from M to F. M's attorneys disclosed that Z had been taken to a physician for examination and that there would be "*certain test results*" and so contact would not be taking place. F stated that he was of the view that M was taking these actions, the timing of which he said was "*suspect*", to provide "*an excuse to justify disruption of contact*". F added that "*the thought that she would go to this length causes me greater fear for the mental safety and well-being of our daughter*".
70. On 24 January 2019 M again attended Dr. Watkin's surgery alone. The doctor's notes recorded that M told her that Z had been talking about a "*squeezing game*" in which Z lies on top of F. The notes reflect that M informed the doctor that Z had said that F does it all the time, that he lies on top of her and that she told them that she did not want to play this. She also said that Z told her that F had talked about keeping secrets. M then went on to mention the "*trapping game*" where Z said that F keeps her down and she tries and escapes and he lies on her back. The notes state that M told the doctor that Z told her that her daddy lies with hips and legs facing down her and she has to wiggle and that at this time his wife is asleep as they play the game in the middle of the night. Mention was also made of "*a smelly game*" but also "*a keep quiet game*". M told the Court in her oral evidence "*I do not see how it is a game, it sounds like grooming to myself, I am not an expert. It sounded like grooming to me at that time*".



71. It is clear from the undated letter that Dr. Watkin sent to Carol Robinson, Social Worker at DCFS<sup>14</sup>, that she viewed these as “*inappropriate games*”. The notes record M mentioning to the doctor that M had reviewed the four photographs<sup>15</sup> and that M thought that she could see hairs in the photographs.<sup>16</sup> The doctor’s notes reflect that the action to be taken would be that Carol Robinson would be telephoned and that there should be no contact with the father. In her oral evidence Dr. Watkin mentioned Z’s medical issues she had treated in December 2018 and January 2019 and then stated:

*“All of these are signs of sexual abuse, we frequently see these symptoms. All of the things you listed are common presentation to pediatrician office, all could potentially be presentation of child sex abuse. That is why when you bring (Z) to office that I not immediately jump to conclusion of child sexual abuse. As I said, once there was this story that (Z) had reportedly given about games with father that I became much more worried. That might be missing a child who might have bene sexually abused. (Z) had a very red bottom and perineum when she saw me in December and January. Lots of children come in with red bottoms, front and back.”*

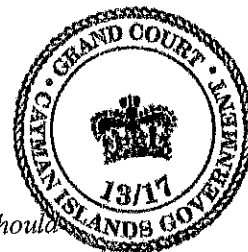
During cross-examination Dr. Watkins stated that in December 2018 and January 2019 that she was “*not unduly worried*” at that time but added in relation to what she had been told about the games she “*got more worried about the sinister story*”. She then added “*Always said all that worry (me) is story given by M about games she said (Z) told her. The visits in January did not immediately worry me*”. When examined by the Guardian

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<sup>14</sup> Mrs. Robinson was later allocated by DCFS to be the Court Welfare Office in this matter and to be the Social Worker appointed to investigate the referrals of abuse for DCFS when it was agreed with MASH that DCFS would investigate as a sole agency.

<sup>15</sup> See paragraph 60 herein.

<sup>16</sup> In her oral evidence M said that she looked at the photographs a week after they had been taken and that is when she saw the hair.



Dr. Watkin reaffirmed: *"Games are what made me worried. That is why I said she should contact Social Services"*.

72. I find that Dr. Watkin, although not hearing the words from Z, was greatly influenced by what M had relayed to her about what she said Z had told her about the games because the doctor stated in the undated letter to Carol Robinson that: *"In light of this new information I think the concern re child sexual abuse must be taken extremely seriously and request the urgent input of social services +/- the police"*. What M had told her clearly made the doctor alter her previously recorded view, which had been that there was no evidence of child sexual abuse. I note that the doctor indicated in an email to Carol Robinson sent on 29 January 2019, that *"at no time has Z told me about these games and indeed Z did not (say) anything at all. When I gently asked her questions about her time at daddy's house"*.
73. The reliance then given on the negative interpretation given to the games is significant. In Dr. Watkin's oral evidence to the Court when asked about it, it is evident that the weight given to it appears greater than she stated in her correspondence with DCFS. It is clear that Dr. Watkin did not feel that the medical conditions were particularly out of the norm. In fact after mentioning the games in cross-examination she went on to say:
- "Young ladies where sore vaginas, sore perineum and itchy bottoms is very common. I see some children regularly with these problems. Soreness and inflammation around vulva and vagina very common until the age of 8. Pinworm is rife on this Island."*



She later stated when referring to when M brought Z in to see her in July 2019<sup>17</sup> with similar medical symptoms which the doctor concluded had been contracted during a cruise with M that:

*“Vaginal discharge, not pinworm, young children can be quite common, nothing sexually transmitted, might not wipe herself well, could be poo on inside vagina.”*

74. On 24 January M went to see Carol Robinson, having already contacted DCFS on 21 January 2019. She had also been in contact with the Deputy Director and Child Protection and Sexuality Education Programs Manager at the Red Cross, who had informed her that she should liaise with Detective Inspector Ashworth at MASH.
75. On 29, January 2019 Dr. Watkin spoke to Carol Robinson and explained the history of her involvement. She was informed by Mrs. Robinson that she would investigate the matter.
76. On 30 January 2019 F’s attorneys wrote to M’s attorneys seeking more information about Dr. Watkin and other medical professionals that Z had seen since 1 January 2017 to date. They indicated that they intended to reach out to those professionals to obtain medical records. In a letter in reply, M’s attorneys confirmed that F was entitled to obtain those records, but added that he should:

*“confirm that he will not attend any place the child will be present until further notice. To do so will mean our client will take steps for immediate injunctive relief.”*

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<sup>17</sup> Which was 3 months after Z last had contact with F.



M's then attorneys failed to share details of the physicians who had seen Z since January 2017, details which F was entitled to as he had parental responsibility.

77. On 31 January 2019 Dr. Watkin sent a more detailed letter to Carol Robinson in which she set out her experience as a paediatrician and her lack of familiarity of the procedures in the Cayman Islands involving MASH when safeguarding issues are raised. In that letter she set out her concerns stating:

*"My position is that as I have examined the child and the circumstances, pattern and frequency more, there is a sufficient risk that this maybe a case of a CSA that it would be negligent not to refer it as such – a potential case of CSA – in order that it may be investigated and the child protected from ongoing harm. I am not saying it is CSA, as that is beyond my remit to ascertain, but I am saying, in my professional opinion that to not pursue it, given the circumstances and presentation, or not pursue it appropriately, is a gross dereliction of professional safeguarding duties, regardless of whether that would be by myself, social workers or other professionals involved."*

She then added:

*"To be clear, the frequency and nature of paediatric complaints this child presents, along with her interactions with me, is sufficient to consider a safeguarding issue, in my professional opinion. The information Mum has subsequently provided from her own investigations only serves to strengthen the need to investigate. Furthermore, I am now in possession of more information available from her Trincay medical notes, which remains completely consistent with my position. To be doubly clear, mum's story is NOT the only or predominant source of my professional opinion. I have a very open and trusting relationship with my patients, and although it is not uncommon for five-year-olds to be somewhat socially guarded, it causes me concern in this case, sufficient to*



recognise the important that this requires a sensitive approach by a qualified professional psychologist. [My emphasis]

78. Dr. Watkin then went on in the said letter to specifically address her concerns. She wrote under the heading "*My Concerns*":

*"From the history and pattern of this child presenting with problems, it is possible, if this is indeed a case of CSA, that it has been going on for quite some time. Besides the obvious psychological effects on (Z), this heightens the difficulty in obtaining the circumstances.*

*It would appear the frequency may be increasing, which obviously heightens the urgency of safe-guarding.*

*This is a sensitive child and that sensitivity may be directly related to the circumstances. Knowing the child as I do, I am gravely concerned that being interviewed by anyone who makes the child uncomfortable will prove counter-productive and result in insufficient findings to act, if there is indeed a reason to act. If CSA is the cause of her presentations i.e. the fears are well-founded, this would be a travesty for (Z). I am well aware of the limitations of my professional training, regardless of 26 years as a consultant. However, I am concerned that a child psychologist is not being engaged and that the interview will be conducted by someone not trained in child psychology or how to approach 5-year-olds in a manner that develops trust and elicits a true story. I am not in any way calling into question the motivations or professionalism of the individuals concerned but I am stating, for the record, my concerns and the need for the right approach. The worst-case scenario here is the risk that a genuine concern or case is difficult to pursue because (Z) is interviewed in a way, or by a person, that results in her not feeling able to share her story, regardless of what that story may be..... I am equally fully aware of the need to protect individuals if the causes are found to be innocent. There's no question that this is a difficult situation for all, but it's a situation with a 5-year old girl at its heart, who presents with physical symptoms and whom is behaviourally guarded around aspects of her little life."*



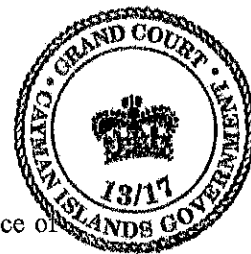
79. The concerns and warning signs of abuse highlighted by Dr. Watkin are significant to these proceedings as they inevitably meant that any child proceedings in relation to Z that followed would not simply involve the determination of a dispute about child arrangements between the parents, but would also now require an assessment of the medical condition of the child and about allegations of possible sexual abuse. It also meant that, even in the absence of a s.39 Children Law direction from the Court, DCFS would likely need to assess and consider whether child public law proceedings should be issued, in order to safeguard the child from physical and/or emotional harm. It is clear that Dr. Watkin was conscious that the outlined differing medical conditions could be caused by a variety of reasons, including non-sexual abuse causation, but understandably, as Z was the primary concern, she advocated on Z's behalf that the safeguarding authorities should appropriately investigate the possibility that Z had been a victim of abuse. Dr. Watkin rightly highlighted, as she took great pains to repeat on many occasions in her oral evidence during the hearing, the limitation of her expertise in the field of sexual abuse, but her observations concerning the requirement for a child psychologist's input were well founded, whether that be to determine whether there has actually been sexual abuse or grounds of concern about possible sexual abuse. This is why the evidence of Dr. Lam, the experienced independent Child Psychologist who was instructed by both parties, as initially demanded by M and her then attorneys, is of great significance in these proceedings. I will analyse Dr. Lam's important evidence concerning her assessment at a later stage herein.

80. I found Dr. Watkin to be an experienced paediatrician, who pursuant to her safeguarding duties, appropriately ensured that DCFS and MASH were made aware of her concerns



"as the primary aim must be to protect (Z)". She quite rightly made it patently clear that she is not an expert in child sexual abuse and that she was not presenting her evidence at the hearing in such a capacity. From what she had seen, Dr. Watkin understandably felt that a referral to the authorities was necessary as she was concerned that there were warning signs of potential abuse. However, she also quite correctly recognised that the medical symptoms could well be viewed as innocent and oft seen ailments for a child of Z's age, but that any decision as to whether they amounted to sexual abuse should be something determined by someone with more specialist experience than her. Her role seems to be more of a reporting treating physician who would rely on others' expertise to make an informed determination. Although, from her demeanour and answers, especially when cross-examined on behalf of F, it became evident that Dr. Watkin felt a great empathy towards M and to a degree was protective of her. Nonetheless, to her credit, she would not be persuaded when examined at the hearing by M to state that she was an expert in child sexual abuse or to state that as a fact that Z had been sexually abused.

81. About a week after taking the photographs of Z's genitals, M went through a week's worth of her trash to see whether she could find the swabs that she had used on the day that she had taken the photographs. M was specifically looking for the hair which she believed she had seen after zooming in to a photograph to see if Z had "any debris" in her private parts. M said that she located two hairs which were still on one Qtip which looked like pubic hair. It appeared that M was thereby inferring that F had penetrated her vagina. M took the same to MASH. On 6 February 2019 Detective Inspector Ashworth indicated to her that he had sought specialist guidance from the Crime Scene Examination Unit ("CSIU") and that he would revert. On 13 February 2019, he again



contacted M and stated that he would recover the items from her with the assistance of the CSIU to minimise any further contamination. The items were recovered and little was done with them<sup>18</sup>, but that would be understandable, as due to the location from where they were said to have been obtained, the circumstances in which they were said to have been obtained and then retained means that they would have no acceptable probative value.

82. Around this time, when M was told that F would be contacted and that Z would be interviewed by a Social Worker, M stated that she would wish to withdraw her report. Interestingly, the reason given was to delay F being contacted, thereby enabling M to have a greater opportunity to gather more evidence. The gathering of evidence by M, whether that be physical evidence or attempts to get some form of disclosure from Z, to support her belief that Z has been sexually abused is an approach by her which has run throughout these proceedings. As a part of this process M surreptitiously, without seeking or acquiring consent, recorded meetings with professionals, including the Guardian ad Litem. She also recorded question and answer sessions she had with Z, in some sessions it was evident from the line of questioning that the exercise was to get Z to say something that would implicate F and Z was bright enough to realise what replies might gain favour with M.

**Background from F Issuing Proceedings on 6 February 2019 until Hearing Scheduled for 28 May 2019**

83. As a consequence of M's unilateral actions in relation to the cessation of contact, F eventually issued his Summons for a variation of the Consent Order on 6 February 2019.

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<sup>18</sup> See paragraph 111 herein, DI Ashworth's indication that the hair samples would not be analysed.



Case management directions were given at the First Appointment hearing on 22 February 2019. One direction was that if Mrs. Robinson, who had become involved in her capacity with MASH and DCFS, was not also able to conduct a Court Welfare Officer Assessment, then the Judge's Personal Assistant should contact DCFS and inform them that a Social Worker should be appointed to conduct the assessment and prepare a Welfare Report. As it turned out Mrs. Robinson was able to take on the role as Court Welfare Officer.

84. The matter returned to Court on 28 February 2019 for the Court to consider interim contact. The Court heard oral evidence from Dr. Watkin. The doctor informed the Court that she had seen a bruise on Z's right thigh (but no other bruising or cuts), a slightly dilated anus with slight redness and chafing on the front. The doctor said she had not noticed any discharge. She told the Court that she had not seen enough *"to make you immediately pick up the phone"* and she then again reiterated that she was not an expert in child sexual abuse matters. When asked whether Z may have a case of pinworm, the doctor confirmed that she had not conducted the test properly, but that that there was *"a lot of it going around"*. The doctor told the Court that there were a number of reasons why a child might have diarrhoea, but also said that you would not normally expect it. She reiterated her view that it was only appropriate for a psychologist to interview Z, although she did accept that she had asked Z if anyone had ever told her not to say anything to which the reply was no one had. Dr. Watkin added that Z had hardly said anything to her and that she had found that worrying and a strange and unusual way for a child to present.



85. Mrs. Robinson also gave evidence at the hearing on 28 February 2019, when she was cross-examined at great length. She stated that she had no concerns about Z and F and she was not recommending supervised contact. In her report dated 20 February 2020 Mrs. Robinson mentioned that she had explored with Z the “trapping game” and “squashing game” and that she felt that their discussions did not reveal any inappropriate behaviour from F and that the games were merely contact games that fell within the bands of normal interaction between a parent and child. She also indicated in the same report that M’s comments about Z taking bubble baths with F were not of concern, as culturally it was not inappropriate and in any event Z described that F was wearing shorts at the time. The recommendation which she made was that both parents should attend co-parenting classes and that they both look at the dietary needs of Z. As she was only part way through her evidence, the matter was adjourned to 20 March 2019.<sup>19</sup> Mrs. Robinson indicated that she would require eight weeks to complete the final Welfare Report and a direction was therefore made that the report be filed by 26 April 2019.

86. Unfortunately, due to unforeseen events, I was not available for the hearing on 20 March 2019 and the matter had to be further adjourned. In the meantime the parties agreed an Interim Contact Order to tide them over to the restored hearing, whereby Z would have contact with F (i) on 1 and 15 March 2019 between 2:45 PM after school until 6:00 PM and (ii) on 10 and 17 March 2019 between 1:00 PM and 6:00 PM. The parties agreed that F’s wife would be present throughout the contact period. F’s concern was that if M was to be the supervisor, which M had initially sought to be, that would not permit him to have natural contact visits with Z as she would intervene and overregulate any session.

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<sup>19</sup> The parties had been offered 29 February 2019 or any day in the following week to conclude the part heard hearing, but regrettably neither of them were available to attend.



87. Contact took place on 1 March 2019 for 2¼ hours, on 10 March for 5 hours, on 15 March for 2¼ hours and on 17 March for 5 hours. Mrs. Robinson arranged two, one-hour contact sessions on both 8 April and 11 April 2019 to enable her to observe F and Z as a part of her assessment. It is clear that, even with supervision, M had concerns about the contact and she still wished to exercise certain control over it. F highlighted a number of emails sent to him by M in the early hours of the morning seeking details about what happened during contact. It is clear that this was part of M's rather compulsive exercise to obtain information in support of the analytical approach she was taking to ground her belief that there had been child sexual abuse. In her email of 19 March at 1:57 AM, M sought information that may have been better requested by her then attorneys if they had deemed it relevant and appropriate to ask for it. In addition, on 17 March 2019 M inappropriately questioned Z in front of F and his wife about the type and nature of her faeces.
88. On 11 April 2019 a strategy meeting was held. It was clear that those present had formed a view that there was insufficient evidence to ground an allegation of sexual abuse and no action was taken by the police in relation to F.
89. When Z went to be interviewed by the Social Workers as a part of the investigation, M deemed it appropriate to turn on her recorder/phone. For around 25 minutes, unbeknownst to those in the area, she recorded what was heard outside of the interview room. M left the recorder on when Z came out of the interview. Z sounded relaxed and happy and appeared to have a good rapport with the professionals as they parted. What was concerning is that almost immediately upon departing the office and going to and



getting into her vehicle M started to ask Z a series of rather pointed questions about what had occurred during the meeting. She started by asking Z *"were you honest?"* She then asked if Z was *"scared of anything that they asked"* After Z replied *"no"* M repeated *"no"* in a surprised tone. This would have likely given Z the impression that it was the wrong answer in M's eyes. M then immediately asked: *"Did they ask you about Dada?"* This was clearly M linking what was scary to F, when Z was not. M then asked whether they asked if unsafe things were happening and followed that up with the questions whether Z had told them what was happening and whether she thought she might be able to tell someone one day, then asking *"are you not ready to talk yet"*. M then pushed Z a little further in questioning asking *"Did you give them any clues to solve mystery – you did like what"*. It appears that Z then replied that she could not remember. M then asked about the *"mystery that hurting your pee-pee but you can't touch it how hurt pee-pee if not touch it"* and when she got a reply M then asked a series of short questions *"Oh it touched you? Did you tell them that part? Is it something you want to touch? Can you touch it if you want to?"* After Z replied, M said *"that has got me confused, does it hurt you – did they ask you that"*. When the answer from Z appeared to be *"no"*, M sounded a little disgruntled. This again would likely have given Z the impression that she was giving the wrong answer and that it was displeasing M. M then asked: *"They didn't ask you?"* M went on to ask Z whether she had been asked if she wanted live with *"Dadda"* or with *"Mumma"*, to which the reply seemed to be a no. It was evident that Z was trying to change the subject, but regrettably shortly after M went straight back to the same line of uncomfortable and inappropriate questioning, asking: *"So this thing does hurt you though?"* Thankfully at that stage the conversation moved on to unrelated appropriate matters. However, M soon returned the conversation back to the meeting, stating that she



just wanted Z to be "okay". M asked whether they had made her scared and after Z said they had not she said that she was glad. She asked Z, if she wanted to see them again, it appears that Z said no because she did not like the questions they had been asking. M explained to her that they had been asking the questions to solve the mystery. M then said, "I see your scary face". From the manner in which M said that it gave the impression that she was ensuring that that her observation was put on the record in the recording. M then asked further questions about "what can touch you, but you can't touch it", about whether there are any other clues and then stated that M was there to help prove the "mystery".

90. I set out the substance of the above questioning by M in such detail as M's approach was not appropriate. It was not a situation where Z was volunteering up information to M, but rather Z was being examined about what had happened in a bid to extract the detail which M hoped she would receive. If Z gave an answer that was not consistent with M's views, M did not leave it there but came back to it to try to elicit a more favourable reply. It is clear that M wanted Z to say certain things so that she could have it on the record in the recording for evidential purposes. What is significant is that from the outset M was implying, by the nature of the questioning, that the scary thing was linked to F. This is not the only time that there is evidence of this occurring. Although it may not be viewed as direct coaching where one sees a parent tell the child to say something specific, this manner of leading questioning, especially if a child has to endure it on more than one occasion will likely influence what a child says, even to the extent that a child starts to be convinced and to say that something has happened which has not. A child may also answer to placate the questioner, especially if the child picks up that that person does not



feel that they are getting the answers they seek and if the child wants to please that person. It is evident from hearing the recording that Z was uncomfortable with the questioning, something M should have promptly picked up on especially as Z had told her that she felt uncomfortable about the professionals' questions. Z tried to change the subject, but M continued to go back in a bid to obtain answers on the recording to the questions that she wanted addressed. It did appear from the nature of the questions being asked and the tenor of M's voice that M became a little exasperated as she was not getting the replies she felt would be consistent with her belief that there had been sexual abuse.

91. Mrs. Robinson submitted her first Welfare Report on or around 9 May 2019. In the report she stated that the professionals involved concluded:

*"With all the information at hand, but also from a medical perspective, there was nothing to suggest that (Z) was being sexually abused; as such the recommendation was made for the case to be assigned for monitoring to provide Social Work support to the family."*

92. Mrs. Robinson noted that she had assessed contact meetings on 8 April and 11 April 2019. Importantly, these occurred in the absence of M. She stated that Z *"greeted her father warmly and that they were both affectionate"*. She talked about them participating in play using play doh and dolls, including role-play. She reported that at one stage Z jumped on F's back and asked for a piggyback ride, which happened. She said that Z *"was enjoying herself, could not stop laughing, this writer found her laughing infectious"*. It is often the case that a child may play more boisterously with their father than with their mother. What the Social Worker recorded is consistent with the different



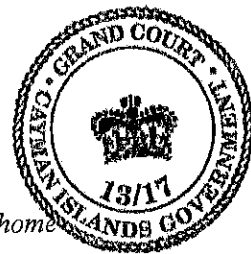
and more physical style of play that Z had with F than with M in the videos of the assessment sessions with Dr. Lam. In fact during M's questioning of Z in the vehicle outlined in paragraph 89 above Z asked M if she would spin her around at the dance party and M said that she could not, seemingly for physical reasons. It is consistent with more boisterous and physical interaction and that is why care must be taken when interpreting the nature of the physical games at F's house which M says were reported to her by Z. Neither Dr. Brown nor Dr. Watkin, who both place great emphasis on the games report made to them by M, have had the advantage that Dr. Lam has had of seeing that type of interaction between Z and her father.

93. Mrs. Robinson said that in the contact session she saw F and Z engage with a seaglass collection which Z and F had commenced on an earlier visit and Mrs. Robinson felt that Z's excitement was "*palpable*". She noted that F and his wife's approach to discipline when it came to packing away the toys was "*firm, yet gentle in their approach to have (Z) comply with instructions*". Mrs. Robinson noted that: "*Z showed no signs of unease*" with F's wife and "*was very relaxed in her interaction with her*". She noted in the report that Z "*became emotional when it was time for her to leave*" and that F "*had to reassure her that she will come back again*". The picture portrayed was of a healthy and natural interaction contact session in which there was a good bond between father and daughter. There were no signs of anxiety of the nature one might expect to see if the allegations relied upon by M were true.
94. Mrs. Robinson reports on the affectionate and happy way that Z interacted with M when she observed them together. She indicated that she did not agree with M's comment



during a visit that the fact that Z's energy level increased when Mrs. Robinson arrived implied that Z was uncomfortable with her presence.

95. Mrs. Robinson expressed concern about the intrusive examinations which Z had been made to endure by that time, one by Dr. Watkin and two by M. M herself stated in her oral evidence that Z *"shows extreme anxiety when there is any examination of her private parts"*. Dr. Watkin noted that Z was *"a lot more anxious than her peer group when medical inspection of (her) private parts"* adding that when she tried to examine Z in 2020 Z was *"very hysterical"*. In cross-examination when it was suggested to Dr. Watkin that by March 2020 Z becoming progressively distressed by these examinations she replied: *"On this occasion she not liked her vulva and anus being examined.... She had always been uncomfortable, she was more resistant than other children might be at her age"*. Mrs. Robinson understandably queries with some concern what Z must have been thinking when this happened, especially when M made Z open her legs wide so that she could take photographs of the inner part of her vagina.
96. As a part of her assessment, Mrs. Robinson rightly sought input from Z's school. She said that she was informed that Z *"presents as a personable and happy child, who is articulate for her age"* and who is *"doing exceptionally well academically and she is first in her class"*. Importantly she was told that Z is a *"well-rounded student, who has friends and socializes well with her peers"* and that she *"is usually well mannered and well behaved in school"*. She said that school observed that Z had *"a warm relationship with both parents and enjoys playing with them both"*. The school informed the Social Worker that despite there being issues in the family from their *"observation of (Z's)*



*general behaviour at school there is no indication that what is happening at home is impacting negatively at school". I note that Mrs. Robinson said that the school shared with her that there were occasions when M "became overly concerned about (Z's) diet and even after they assured her that there is no concern for Z during mealtime, it seems concerns persisted and she requested daily updates on Z". Although a small point, it is an independent person indicating what may be seen as over protective and rather obsessive parenting.*

97. Mrs. Robinson stated at paragraph 99 of her report that Z:

*"did not make a disclosure anywhere, not to her mother, the social worker, at school, to a friend/playmate or to her therapist, Dr. Brown. There is no indication in her behaviour, academic performance of any emotional disturbance that would indicate that such abuse took place. Also the fact that Z is involved in a number of extracurricular activities, and no reports were made of any concerns. The usual markers of abuse were not present. In addition to the fact that she displays no anxiety or fear for her father, which is almost always the case with abuse victims are around their abusers."*

98. Having regard to the way that the case developed after this report and M's later conduct, Mrs. Robinson showed insight when she expressed a worry that:

*"Based on her determination to find evidence, there is some concern that (M) will continue her efforts to prove that child sexual abuse took place, which would be to the detriment of her daughter."*

She added that:

*"106. By the information provided, it seems that (M), always has some hesitancy with (Z) visiting her father, long before these allegations surfaced and she always wanted to maintain control. It can thus be concluded that making such*



*allegations would guarantee that (M) remained a parent who decides how and when (Z) has contact with her other parent.*

*107. It was observed that (M) wanted to direct the response to her report. She tried to prevent (Z) from being interviewed, she submitted evidence she collected, she frequently sends email, some in the wee hours (2am, 3am etc) at a time when people are usually asleep. She made demands for information; she insisted that (Z) be seen by MASH Child Psychologist despite being told that the Child Psychologist at MASH meets with children after disclosure is made ...*

*108. "By her insistent behavior (M) wanted to take the findings in the matter when told that the report was unsubstantiated, she became difficult to deal with and belligerent. During the process of this report, she was particularly antagonistic towards this writer..."*

I note the inferred criticism that M was insisting that Z be interviewed by a child psychologist. Although I agree with the concerns expressed by Mrs. Robinson, it is not fair for Mrs. Robinson to criticise M for seeking a psychologist's involvement because M was simply adopting the firm views already expressed by Dr. Watkin in that regard, which the doctor had already shared to M and to Mrs. Robinson.

99. Following her above assessment, at that time, Mrs. Robinson, was recommending a shared residence order with Z spending alternate weeks with each parent, with an equal share of school holidays.

**Background - From Hearing Scheduled for 28 May 2019 to End of June 2019**

100. The delayed part-heard interim hearing from 28 February 2019 did not come on before the Court again until 28 May 2019. At that hearing Mrs. Robinson had the opportunity to continue presenting her oral evidence. It became evident that, due to the issues that were



being raised, the hearing would not conclude on that day. This resulted in the parties, with the assistance of their experienced Counsel, having lengthy discussions outside of the Courtroom to put in place a further interim contact arrangement to last until the final hearing which had been fixed for 9-10 July 2019. The Court was satisfied that the parties had agreed that Z would have contact with F on (i) 30 May and 6 June 2019 from 3:45 PM until 6:00 PM, (ii) 1 June and 2 June from 10:00 AM until 6:00 PM and on the Public Holiday on 10 June 2019, (iii) 16. June 2019 10:00 AM to 2:00 PM, (iv) 20 June 2019 contact of the school until 6:00 PM, and (v) 22 June 2019 from 10:00 AM until 6:00 PM. It was agreed that F and his wife would be included in Z's birthday party celebration lunch at Camana Bay between 9:30 AM and 3:00 PM, and that Z would then have contact with F from 3:00 PM until 6:00 PM. In relation to the involvement of F's wife and contact, although F forcefully felt that there was no need for supervision, I suggested on a without prejudice basis that she should remain generally present during the contact and that her presence would be that which one would naturally be expected by the stepmother, when present, around a child. I recall that both Counsel, after that had the opportunity to take instructions from their clients were content with the wife taking on that role.

101. Most regrettably, within a week, the Court was informed that this agreement was not being adhered to by M. The issue appeared to revolve around the nature of the involvement of F's wife in the contact arrangements.

102. The first scheduled contact was on 30 May 2019. There were work circumstances which required F's wife to remain at home and which prevented her from being available for the



collection of Z from school. Although the school is located very close to F's home, M proposed that the parties meet near Salty's in Grand Harbor. F said that M was aware that his wife could not leave the home for work reasons and that M still refused to drop Z off at his home, meaning that contact could not take place as M would not allow F to collect Z alone and take her home. F was of the view that this was a deliberately uncooperative stance taken by M to prevent contact taking place. Although M had expressed to him that she felt uncomfortable attending his home, due to the proceedings, F highlighted that she had previously attended his home to collect Z and had actually sat in her motor vehicle outside of his home for the entire session he had with the Social Worker when she was assessing a contact session.

103. M failed to make Z available for contact on 1 or 2 June 2019. F and his wife turned up at the appointed time for contact and M failed to attend. She also failed to inform F that she was not going to attend, and when asked in an email when she would be dropping off Z she abruptly replied: *"I will not be and I've documented my reasons for so doing, to the relevant safeguarding professionals"*. F and his wife attended for contact on 2 June 2019 at the appointed time and this time his email enquiry to M as to where she was was not answered.
  
104. Apart from not complying with the terms of the agreement reached at the hearing, M refused to sign the Consent Order because she did not agree with the terms therein concerning supervision. In addition, M's Counsel stated in an email sent at 12:44 PM on 4 June 2019:



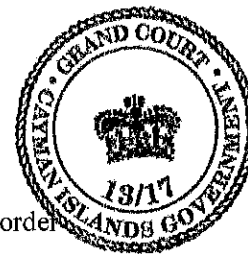
*"My instructions are to make clear that the mother cannot agree the order as drafted as she cannot allow any contact to proceed between the father and the child in light of new information. I have no further instructions in relation to the draft document."*

What M and her then Counsel failed to comprehend is that the draft of the order reflected the agreement reached and approved at Court. The accuracy of that written order, the purpose of which is to record what was agreed at the hearing, does not change if M later changes her mind about the arrangements and refuses to comply with the arrangements.

105. In addition, in an email sent at 8:46 AM on 4 June 2019 by M's attorneys to the Court, Counsel stated that:

*"On Thursday morning the mother related news of the planned contact to the child and could see the news was upsetting to her. The Mother could see additional signs of distress in the child as a scheduled exchange time approached. Further information then came to light on Friday that was reported to the relevant safeguarding authorities and this clearly documents our reasons for the mother now withdrawing contact altogether. This is not a decision taken lightly by the mother. The position taken by the mother is one that she feels puts the child's needs and basic rights to physical, emotional and mental well-being ahead of our own interests knowing the impact this may have on the perception of herself in this case."*

106. The draft consent order was submitted to the Court for its approval despite M's refusal to sign it. I was satisfied that the draft was consistent with what had been outlined to the Court at the hearing, save for a few minor alterations including the removal of a penal notice clause. On 4 June 2019, in an email transmitted at 10:26 AM, my views about the content of the draft consent order were communicated to the parties and I informed them



that their obligations regarding interim contact arrangements were spelt out in that order and that they would remain in place unless varied by a properly brought application made by a party seeking to vary the order.

107. I was so concerned about the flagrant breach of the consent arrangement, which had been agreed between the parties with the assistance of their attorneys after lengthy discussions, that I directed in the same email that Carol Robinson should “meet” Z in the absence of M and also in the presence of F as part of the assessment. The latter meeting with Z and F was of course not to interview the child in the presence of F, but to view their interaction with each other because of what M’s attorneys had stated concerning Z’s distress in the email of 4 June 2019.<sup>20</sup> It appears that Carol Robinson, M and Dr. Brown all mistakenly believed I had directed that the “meeting” be an interview of Z. I suggested that Mrs. Robinson arrange these meetings promptly and then draft and present a brief Addendum Report.

108. Not long after the direction had been given, Mrs. Robinson communicated with the Court indicating a concern that M had “barred” her from meeting Z at school unless a staff member was present. In an email sent at 11:26 AM to the attorneys, the Court made it very clear that if Mrs. Robinson felt that she could hold the meeting with a teacher in attendance, then there would be no issue. If Mrs. Robinson felt that the meeting should not include a teacher, then the Court would expect the meeting to take place either at the school, at the Welfare Department’s Office or another venue deemed suitable by Mrs.

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<sup>20</sup> See paragraph 105 above.



Robinson. The Court also repeated the same direction in relation to Mrs. Robinson's meeting with Z in the presence of the father. Importantly, I stated that:

*"As the meetings are required for the welfare officer to prepare an addendum report that is ordered by the Court, the Court expects both parties to cooperate with any reasonable arrangements suggested by the Welfare Officer."*

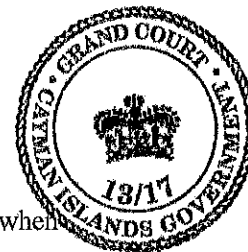
I added that:

*"The school should be aware that the father has parental responsibility and therefore is entitled to be consulted about all issues regarding the child's education. The school should be aware that there is no order preventing the Court Welfare Officer from attending at the school to interview the child, nor does the Judge feel there is any good reason to prevent the Welfare Officer interviewing the child at the school if the Welfare Officer feels that it is necessary to enable her to perform her duties as required by the Court."*

109. Mrs. Robinson accompanied by F and another Social Worker attended the school at 11:45 AM in compliance with the Court's directive. However, despite my directions and the clearly expressed reasons for them being made, M had deemed it appropriate to immediately withdraw the child from the school. At 11:35 AM, M's attorneys indicated that M had instructed them that:

*"she did remove the daughter from school and she wished to prevent any actions being taken that might be counter-productive or detrimental to her well-being."*

This is not an appropriate excuse for preventing the Court appointed Welfare Officer from seeing a child in compliance with a recent Court directive. It is an example of M seeking to control the nature of a Court-ordered assessment. It is also an example of controlling contact and raising concerns just after a significant hearing in the proceedings



at which arrangements had been made for contact. It is also interesting to note that when M wishes an assessment to be done by someone who she perceives as being favourable to the case that she wishes to present, Z will attend at their offices/surgery frequently with no issue.

110. The only reason that M may arguably rely upon to justify part of her actions is if she genuinely believed, as she told Dr. Brown, that the Court had directed that the Welfare Officer interview Z in F's presence. If Dr. Brown had been told by M that this was the direction of the Court, it is understandable that the doctor would have concerns about it. It appears that M was relying on the advice she was getting from Dr. Brown as a result of this misrepresentation of the Court's direction. If there was this belief about the nature of the meeting and understandable concern M, who was clearly in very regular communication with her attorneys at the time, should have instructed them to write to the Court to highlight the inappropriateness of and concerns about such an interview or at the very least to seek clarification about whether that was actually what the Court had directed. M did not do that, she simply withdrew the child from the school deliberately preventing the meeting from taking place. Both sets of attorneys then on the record at the time heard the direction being given and they later clarified that they did not consider that the Court had directed that Z be interviewed in the presence of F.
111. On 5 June 2019 DI Ashworth informed Mrs. Robinson that the hair samples provided by M would not be analysed due to the manner in which they had been collected and because Z had not made any disclosure. He informed Mrs. Robinson that the



police/MASH had not assigned a case number to the matter as they felt they had no case to investigate.

112. Mrs. Robinson also contacted the school on 5 June 2019 and she was informed that Z was absent. M kept Z out of school on Thursday 5 and Friday 6 June 2019 for health reasons (“*a slight cough and a stuffy nose*”). M took Z in to see Dr. Watkin on 7 June 2019. In her notes Dr. Watkin wrote that Z had an acute upper respiratory infection. She also noted that “*Mum had planned to let it run its natural course. The social worker is concerned that she not at school*”. In such circumstances it is harsh for Mrs. Robinson to criticise M for keeping Z out of school if she was genuinely doing it because Z was unwell, but the rapid removal of Z on 4 June 2020 is questionable. I note that, although not well enough to go to school, M felt that Z was well enough to fly with her to Miami for that long holiday weekend, thereby preventing F from playing any part in Z’s birthday celebrations as had been agreed<sup>21</sup>. Dr. Watkin told the Court in her oral evidence that M had not made her aware that they would be catching a flight that weekend. It is evident that M’s attendance at the surgery was primarily aimed at obtaining a medical note to support her reasons for not having Z at school. M returned Z to school in the week of 11 June 2019, that week being when everyone was aware that Mrs. Robinson was away on a holiday.

113. Upon receiving an email from Mrs. Robinson on 7 June 2020, the Court became aware of what the “*new information*” which was upon by M to cease contact and which had been

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<sup>21</sup> F stated that at the hearing on 28 May 2019, M had informed view about the trip to Miami and said that he was welcome to join them. F said that she rescinded that invitation only providing him with the flight details through her attorney at 3:28 PM on 7 June.



vaguely referred to in M's attorney's email sent at 12:44 PM on 4 June 2019.<sup>22</sup> In her email, Mrs. Robinson summarised what had happened since the hearing on 28 May 2018, stating as follows:

*"... Since this matter last appeared in court and the parties came to an agreement regarding contact – this has not taken place. (M) instead made two more child abuse allegations reports on June 4, 2019 by Dr. Collene Brown<sup>23</sup> and June 6, 2019 from On Course Cayman. Both were reviewed on Thursday 6<sup>th</sup> June during a strategy meeting with MASH and the police/FSU and the police has categorically stated that there is no case to investigate based on the information provided....."*

*(M) also made reports of child sexual abuse to the Family Resource Center and the Red Cross, agencies without remit to investigate. It is unclear what she hopes to achieve, except that (Z) will be regarded as a victim and (F) will be viewed as an (sic.) sexually deviant offender.*

*Attempts have been made, however this writer has not been able to carry out the direction of the court that (Z) be interviewed<sup>24</sup> in the presence of her father. This Writer along with another Social Worker arrived at the school on June 4<sup>th</sup> to meet with (F) (father was also present), however, prior to getting there, (M) had swiftly removed (Z) from school, indicating to her lawyer that she did not want this interview to take place.*

*Another attempt was made the following day June 5<sup>th</sup>, however, this writer was informed by the school that (Z) was still out of school. Writer just learned on June 6<sup>th</sup> from (F) that the school informed him that (M) indicated to the school that (Z) was sick. This is highly suspicion (sic.) and I am concluding that she is deliberately keeping (Z) out of school because she does not want to be interviewed or to have contact with her father. Please note that (F) was also to*

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<sup>22</sup> See paragraph 104 above.

<sup>23</sup> Dr. Brown submitted a report to MASH on 6 June 2019 in which she noted that Z was observed to be anxious and withdrawn during therapy.

<sup>24</sup> It has already clarified herein the Court did not direct that Z be interviewed in the presence of F, but that the Welfare Officer arrange a meeting between F and Z, which she should attend to assess their interaction in the presence of her father.



*have access visit (per court order) with F yesterday 6<sup>th</sup> June, however, this did not happen.*

*By her actions, (M) seemingly have no intention of adhering to the order of the grand Court. There is now a grave concern that if she leaves Island tomorrow June 8<sup>th</sup>, that she will not voluntarily return.*

*I am thus seeking the intervention of the court in this matter today, and as the Welfare Officer. I have not had sight of (Z) for a while. At this juncture, I have reason to believe that she is at risk of suffering significant harm."*

114. In light of the content of the email, Mrs. Robinson and the parties were informed of my view that *"there is currently no application before me, brought in the proper manner"*. I advised Mrs. Robinson to speak with her legal advisers, especially if she felt there may be grounds for commencement of public law Children Law proceedings.

**Background – Involvement of Dr. Brown and M’s Questioning of Z**

115. Dr. Brown’s involvement in the proceedings is significant as it raised issues that inevitably have had to be carefully assessed, thereby causing more delay in the proceedings. It appears that Dr. Brown was retained by M to treat Z from around February 2019. F was not consulted about Dr. Brown’s instruction and only became aware about it when he received a copy of the Welfare Report dated 10 May 2019.

116. Dr. Brown had informed DCFS on 1 February 2019 that she had met Z and M and that M from that time had raised concerns about child sexual abuse. She told DCFS that she was not able to conduct a forensic interview with Z, as that was the remit of MASH, but she would be willing to undertake general coping skills and emotion therapy work with Z. Dr. Brown updated DCFS on 26 April 2019, informing that she sees Z at weekly sessions and



that they had built up a positive rapport, resulting in Z being able to discuss her feelings. She informed DCFS that her recommendation was that the therapeutic support should continue. Mrs. Robinson says that she was informed that the sessions were not geared towards abuse, but that the therapy was beneficial for a child who has undergone parent separation and divorce between parents.

117. Due to the knock on effect of Dr. Brown's 'evidence' to these proceedings it is necessary for me to outline in some detail the material produced by Dr. Brown that has been presented to the Court and some of the representations and "*new information*" that Dr. Brown relied upon therein.
118. On 31 May 2019 M sent an email to Dr. Brown, Dr. Bodden and DI Ashworth. She sent the email to report what she said Z had said to her on the way home after a play date and after what appears to be a direct leading question asked by M about whether Z "*remembered telling me that there was something she was too scared to tell me about*". M having introduced into Z's mind that there was something she was scared of, after Z replied yes to the question, a series of questions were then asked by M. There is a marked similarity with the manner of the questioning that followed Z's interview with the DCFS outlined at **paragraphs 89-90** above. As it was also on that occasion, the concern is that the topic is one that was raised by M followed by a line of specific, sensitive and suggestive questions which are designed to obtain narrow desired answers.
119. M stated in the above-mentioned email that after Z had replied "*yes*", Z went silent when asked where the thing she was too scared to tell happens. M said that she then asked



whether it happened at her house to which Z replied "no". M then asked whether it happened at F's house and significantly Z again replied "no". When M then asked if it happened at school or in Canada, Z again replied "no". Clearly M was not happy with the replies that she had received and then inappropriately put pressure on Z by continuing the questioning. M says that she said to Z *"if there is something she's too scared to talk about it must happen somewhere"* and then asked Z *"if she thought that by lying or pretending it doesn't happen anywhere, if that will make the scary thing stop"* to which Z replied "no". Even more inappropriately M then asked Z *"if she was lying when she said no to the places I asked about"*. A parent, inferring to their child, that they have been lying because of the answers they have been giving to these types of questions put undue pressure on that child to speak freely. A child is instinctively not going to wish that a parent believes that they are lying and wish to give an answer which they feel the parent would feel is truthful, even though it may actually not be so. It is not particularly surprising that after an apparent pause Z said *"Yes. Dad's. It happens at Dad's"* contrary to her earlier answer of "no" when she was not under such pressure. Unfortunately, M did not leave the questioning there, but went on to ask if F's wife does anything scary, to which the reply was "no". M said that she then asked if *"it happens"* when F's wife is in the house and the reply was *"sometimes"*. Presumably *"it happens"* is M asking about the *"scary thing"*. M then asked Z if *"it happens"* when F's wife is awake and in the house and she reported that Z said *"sometimes."* M then said that she told Z *"that if something scary is happening at daddy's house then I would prefer she not go there tomorrow and she said that's fine because she didn't want to go there anyways and she started planning all the things we could do tomorrow instead"*. M then recorded in the email that she told Z *"...it's Mummy's job to protect her"* and then inappropriately she



added "it's hard for momma to help her if she lies or pretends everything is okay when it's not. I asked her to always tell the truth and not pretend if she is scared". This is again putting in Z's mind that if she does not confirm to her mother when answering questions that something is happening at F's home then she is lying, because the truth is that it happens at his home.

120. Interestingly, unlike some other occasions of questioning by M, there is no audio record of this detailed exchange. Such a recording could verify that this question and answer session actually occurred and also the manner in which questions and answers were raised. In the earlier analysed questioning in M's vehicle after the DCFS interview with Z, the way in which questions were asked and the tone in M's voice when asking the questions was significant. It is clear that M felt that this exchange, if it occurred, was of great importance as she promptly sent it on to Dr. Bodden, Dr. Brown, DI Ashworth and to her attorney.
121. Regrettably at that time, neither Dr. Brown nor DI Ashworth appear to have reviewed the nature of the questions and answers, save for accepting it as being accurate at face value. Dr. Brown did not appear to consider the appropriateness, and knock on effect on later 'disclosure' made by Z to Dr. Brown, of the line of questioning at all, she simply accepted in an email sent the following morning that what M told her was Z "*disclosing her feelings more readily*" and felt that Z had been exposed to a situation that scared or frightened her "*to that level*". M then sought guidance from M's counsel and DI Ashworth. Therefore, it is to a degree understandable that DI Ashworth felt it would be remiss of him not to alert MASH and DCFS about the content of the email. Interestingly,



at this stage, Dr. Bodden, who is M's psychologist employed at OnCourse Cayman, got involved and she sent an email address to "Everyone" indicating that she was "glad" that Z "was opening up" and that she agreed with Dr. Brown with "the importance of protecting (Z) physically, emotionally from situations that she perceives as unsafe".

122. It is significant to note that the above questioning by M occurred only three days after the consent agreement containing a schedule of interim contact until the final hearing commencing in July.

123. Dr. Lam observed that with M, due to the unwavering belief she held of the abuse having occurred, the "risk of leading questions was high". When examples of the questioning (content of the questions asked and manner in which they were asked) were provided to Dr. Lam by F's Counsel during cross-examination, Dr. Lam classified the questions as being leading questions. For example in the following extracts from the evidence:

*"Lam (L): If this happened to a young person and an adult kept using the same questions, then it might increase the anxiety and the child will keep trying or feel pressure to change the answer in order to give the adult or person asking the question what they want."*

*C: And you say that there is a risk as to leading question. What is that risk?*

*Lam: The risk is that if the... feeling that I got at the time of the interview is that there is an urgency and focus of finding the evidence of sexual abuse and that is because of the high tension at the time. I worry that there might be pressure on (Z) to make a disclosure. I have no factual evidence on that but was a clinical risk."*

And concerning the emails regarding Z's disclosure:



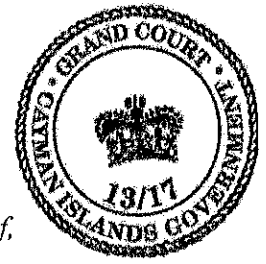
*"C: The same bundle has Carol Robinson's report, tab 6 pg. 190. This is an email from (M) to Alexandra Bodden and Colleen Brown and the police officer involved, 31 May 2019. This is (M) reporting to these people a conversation she had with (Z). "I asked if (Z) remembered that there was something that (Z) wanted to tell me something that she was scared to ask.... [reads the questions/conversation]." Is that an example of leading questions you were talking about?*

*LAM: I am afraid that it may be a leading question, but I want to know the facial expression and tone of the voice. But from reading it from paper, it might seem that way.*

*C: Pg 187, Thurs 13 June from (M) to Dr. Bodden. Later on the same evening on the 31 May I asked if the person doing the scary thing was daddy. She said no... [Reads email.] might that be another example of a risk of leading question?*

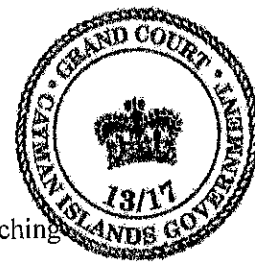
*LAM: Yes particularly paragraph. 1, when the young person said no and the follow up questions was asked in a similar manner "looks away and says no its daddy" first she said no and then she changed her answer."*

124. Following the email from Mrs. Robinson dated 7 June 2019 airing her concerns about M's non-adherence to the contact order and the Court's reply that for it to be before the Court to review a formal application should be made, on 12 June 2019 F filed a Summons seeking an order that M be compelled to comply with the Order of the Court dated 28 May 2019 and that a penal notice be attached. M was aware of the Summons as it was filed with a listing form signed by her attorney. The Court upon administratively reviewing the Summons in a case management capacity at the request of the Listing Officer informed the parties that Z should be immediately seen by Mrs. Robinson and that the interim order remained in force and indicated that:



*"The nature of the breaches of interim S10 Orders and the merit, or lack thereof, of any reasons given for the breaches will be matters taken into account at the final hearing."*

125. It is also significant that M sent a further email on the following day, 13 June 2019 (at 5:25 PM), to Dr. Brown, DI Ashworth, MASH, Dr. Watkin and to her attorney. In that email she said that later on the evening of 31 May 2019 she actually asked the leading question *"if the person doing the things she is too scared to tell is daddy?"* to which Z replied *"no"*. This is the second time on that same day that Z had initially said *"no"*, when questions were being put to her by M which inferred that things were being done by F at his house. M said that she was caught by surprise when Z said *"no"*. If what M records in her email is accurate, rather than leaving the issue there, especially as she had been surprised, she went on to ask what to a child would be inappropriate abrupt questions. M said that when Z answered M *"turned to look at her and asked her, well, if it's not daddy, then who is it? What is their name? Do I know them?"* M recorded that *"(Z) looked away and said no, it's daddy"*. It is hardly surprising that that is the answer Z made having regard to the nature of the questions she had been asked, although Z's initial indication that F was not the person doing scary things.
126. In the email M said that she asked further questions on the afternoon of 13 June 2019, again this was a day after F's Summons was filed concerning M's breaches of the contact order. M's need to further question Z appears to be a response to the fresh application she was facing for breaching the court orders and to deflect the resultant criticism and concerns of the Court. If what M recalls is accurate, M again asked a leading question



and this time she went further by putting in Z's mind that the scary thing is the touching of private parts. M records in the email that:

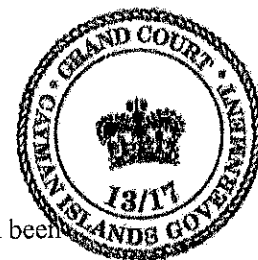
*"... I said do you know what, and she replied with what. I said, I think that the mystery (this is what we refer to when speaking of the unknown reason, a private parts keep hurting) and the thing you are too scared to tell me might be related, am I wrong or right? She said you are right, and then she immediately said she doesn't want to talk about it."*

Again Z was given the option of agreeing or disagreeing with what her mother told her or inferred to Z that M believed and it is not surprising that Z took the option of agreeing with M. M records that she had told Z that she believed her and the importance of using her own words, and that she would need to tell other people too, and that those people could help to keep Z safe. M felt that she knew that Z was now ready to open up to other people, including the safeguarding authorities. It is a little surprising that M mentions Z using her own words, because during her questioning she is almost putting words into Z's mouth. When one considers the direct and leading questions that M says that she put to Z, it is also surprising that M then goes on to state in the email that the questioning of Z needs to be handled very carefully. M does not recognise that her questioning was inappropriate in any way and this shows a significant lack of insight about the effect that such questioning may have on this child who appears to change her answers in order to please her mother by giving the answers she believes her mother would like to hear and which she believes that her mother would think were not lies. The interview process embarked upon by M are very different to one where a child volunteers disclosure without being pressured or lead into doing so. As stated in *Re X (A Minor) (Child Abuse: Evidence)* [1989] 1 FLR 30, a court will wish to see responses from a child which



are neither forced or lead. Interviews with children are better conducted by safeguarding professionals and that is one reason why it is undesirable for a parent to conduct or even be present during an interview with a child (**Re N (Child Abuse: Evidence)** 1996 2 FLR 214.

127. In the same email M also highlights that Z has exhibited extreme signs of anxiety, panicking when she was out of her sight for even a minute on the days or locations that she was supposed to be in the presence of F. M said that this occurred when she was made aware on 30 May 2019 of the contact dates and times to which she exhibited anxiety and said that she did not want contact, even if F's wife was present. It is for this reason that M said she did not allow access on the agreed dates, although she accepted that as such she was in "*violation of the consent order currently in place for interim access*".
128. Dr. Brown sent a referral email to DI Ashworth at 6:47 PM on 13 June 2019 (almost an hour and a half after M's email sent on that day). She said that during therapy M had raised the exchange in her email about the "*mystery*" and private parts hurting. Interestingly, Dr. Brown records that whilst Z was in the room M referred to that in her presence by saying: "*What we had talked about in the car*" and that Z had been brave in discussing her feelings. Dr. Brown recorded that Z said: "*No*" and M said: "*Oh, did I say something not right?*" to which Z went quiet and did not reply to it. One concern is why was Dr. Brown enabling this exchange with M to take place in the presence of Z? Another concern is that despite Z's reply made in her presence, Dr. Brown believed it significant enough to merit a further referral to MASH. It does appear that Dr. Brown did



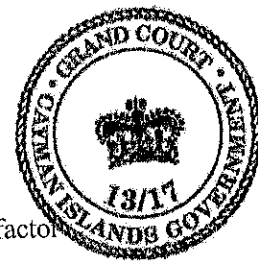
not feel that, or even take time to consider, whether any of the questioning by M had been inappropriate, for at no time she did comment on the appropriateness.

129. On 6 June 2019 Dr. Brown had provided a Written Summary of treatment in relation to Z. I am satisfied that Dr. Brown knew that child private law proceedings were ongoing and that a Written Summary of this nature, although provided to F, would likely be relied upon by M within the proceedings. In the summary Dr. Brown noted that Z attended psychological sessions with her with an emphasis on general cognitive behavioral therapy techniques to improve skills such as emotional expression, anger management, and utilisation of coping skills.

130. Dr. Brown highlighted that during the therapy Z had:

*“disclosed a number of concerning symptoms, including withdrawal from conversations when asked about her emotions, rapid fluctuations in mood, unusual responses to questions (i.e. growling when notified should be meeting with the social worker), avoidance to discuss certain topics, fluctuations in responses (i.e. expressing she does not want to see (F) , followed by quick reversal of her previous statement, then becoming quiet and withdrawn from session), and testing boundaries of touch with this writer (i.e. touching hands and feet of this writer and looking at this writer for reactions).”*

131. M’s attorneys wrote to Higgs & Johnson, the attorneys representing OnCourse Cayman highlighting that the “*various observations*” recorded by Dr. Brown in her 6 June 2019 treatment summary were not documented in the full set of her notes that she provided to them on 21 June 2019 and requested “*the notes which record the detail of the therapy sessions, including observations made of Z*”. In the end, despite giving the impression to



a reader of her summary of 6 June that her observations therein were an important factor leading to her recommendations and of material concern, it is debatable whether Dr. Brown did at that stage really believe these observations actually amounted to “concerning symptoms”, because Higgs & Johnson replied to the request:

*“Although there were unusual behaviours exhibited in session as noted in the letter, the behaviours were not to the level that would be considered clinically significant or outside the expected range and so were not recorded explicitly.”*

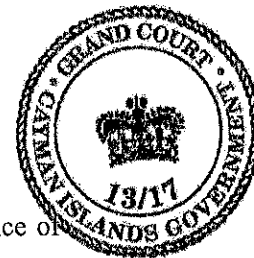
[My emphasis]

132. The issues were then further canvassed by further requests for clarification from F’s attorney to Dr. Brown. Some replies were given, but Higgs & Johnson remarked that they were concerned that:

*“We are verging into cross-examination by correspondence, and am unlikely to recommend that my client respond to any such further requests in this format.”*

133. Dr. Brown was asked to clarify whether the symptoms cited in her 6 June 2019 Written Summary, which she had described as concerning and indicative of trauma and which had been used to ground her recommendations, were in fact clinically significant. Dr. Brown seemed to change her view again, this time saying that:

*“The symptoms were described as within normal limits in the therapeutic notes it should be noted that this does not mean symptoms are not present, and that the symptoms do not hold some clinical concern. However, symptoms presented did not present at a level that would require immediate emergency action... In Z’s case, symptoms were concerning, but did not require immediate emergency action. This is why therapeutic notes referred to “within normal limits” and additional recommendations were given.”*



Far from clarifying the issue, this appeared to be a third view about the significance of the symptoms and observations that she had made. In the Written Summary, the impression was that they were very significant and a great concern. In the Higgs & Johnson letter of 30 June 2019 they did not appear to be a concern and in the Dr. Brown letter of 1 July 2019 they were a middling concern. If F's attorneys had not requested fuller details, because Dr. Brown has refused to attend this hearing at M's request<sup>25</sup> and to be cross-examined, this Court would have been left with an inaccurate impression about Dr. Brown's actual view about the importance of the mentioned observations. As it stands, as she is expressing varying views, it would have been extremely helpful if she had made herself available to be examined and/or cross-examined in order to give some clarity to them. It would have also enabled the Court in an informed manner to determine what weight should be placed on her evidence, which would have been in Z's best interests.

134. In her Written Summary Dr. Brown then went on to discuss the email that M had sent to her. On 31 May 2019 she noted that at the upcoming therapy session on 5 June 2019, Z would not allow M to leave her office and that she became visibly distressed when M left to go to the restroom. Dr. Brown noted that although Z had shown some separation anxiety in the past from M, this level of anxiety had not previously been observed.

135. Dr. Brown wrote that, upon reviewing literature about trauma and potential sexual abuse, she felt that Z's symptoms represented common reactions to trauma. Sensibly, Dr. Brown

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<sup>25</sup> As highlighted by the Guardian ad Litem who had contacted Dr. Brown after the commencement of this hearing had contacted asking her to attend the hearing and indicating that the Court and the parties were happy for her to attend by Zoom as she had recently moved back to the United States of America.



recommended that a more comprehensive psychological assessment of Z be completed by an independent clinician in order to ensure conceptualisation of the case is appropriate and that these findings be used to inform the goals and direction of treatment. She specifically stated that:

*"A trauma – informed assessment should be completed by a psychologist with specific expertise in trauma and related symptomology to examine (Z's) current symptoms and presentation, relational attachments and further examination of her internal worldview. On island, Dr. Erica Lam of Aspire Therapeutic Services is able to conduct these particular assessments." [My emphasis]*

136. Dr. Brown went on to say that, upon reviewing forensic interviewing literature as well as consulting with professionals, any interviews with Z should be conducted utilising internationally recognised standards of child interviewing by specific trained members of MASH. Importantly she went on, seemingly already having formed a view, although she had not conducted any trauma therapy, that F had been the likely cause of any trauma to Z when she said:

*"To avoid any chance of re-traumatization, until the above-mentioned steps have been completed, it is recommended that any contact between Z and her accused perpetrator should be supervised by an independent third party to ensure safety of Z at this time."*

137. Dr. Brown may, with hindsight and in the circumstances of this case at a time when there had been no arguable disclosure of abuse from the child or independent medical evidence of sexual abuse, feel that the reference to F as being Z's "accused perpetrator" was rather indelicate phraseology to use in child private law proceedings before a more thorough assessment had been conducted by an expert in the field. It is a pity that Dr.



Brown did not refer to F as Z's father in what are civil family proceedings. I am conscious that in the American academic literature the phrase: "*alleged perpetrator*" is sometimes used, but this is more often in criminal proceedings, where sexual abuse allegations are made. I accept that it may be because Dr. Brown qualified as a licensed Psychologist<sup>26</sup> in 2016 and was educated in the United States that she used such phraseology. Whether intended or not, Dr. Brown's phraseology was inflammatory and not helpful, especially if she recognised the importance of F being on board to put in place at least some of her recommendations. Regrettably, her approach clearly gave F the impression that Dr. Brown was allied to M and biased and that, without giving him an opportunity to meet with her and discuss his interaction with Z, she had already formed a strong negative view of him.

138. It is important to note that Dr. Brown's appropriate recommendation about the appointment of Dr. Lam was eventually adopted by both parties. However, it is disappointing that Dr. Brown has shown an unwillingness to provide evidence in an appropriate form. It would have been of value to properly explore with her what her views are concerning the recommendations and findings of Dr. Lam arising out of the assessment which Dr. Brown herself had felt was necessary to properly conceptualise the case. It would have been interesting to see whether Dr. Brown accepted Dr. Lam's view that this is not a sexual abuse case, but one with potential long term emotional issues for Z resulting from M's approach. If Dr. Brown did not agree with them, it would have been interesting to understand why not, especially as M places great emphasis on Dr. Brown's observations in support of a contention that sexual abuse has been inflicted by F on Z.

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<sup>26</sup> September 2016.



139. The nearest one gets to understanding how Dr. Brown views Dr. Lam's assessment and findings can be found in the evidence of the Guardian. The Guardian informed Dr. Brown about the content of Dr. Lam's Written Report and the finding that there was no sexual abuse and her recommendation about Thera play for Z moving forward. The Guardian stated that Dr. Brown said that she wanted to abide by Dr. Lam's recommendations about therapy, although she added that her personal clinical view was that she was "not a fan" of the Theraplay. The Guardian had the impression that Dr. Brown:

*"appeared reluctant to state that supervised contact was no longer appropriate as she described (Z) as 'nervous' about spending time in her father's home."*

140. Before Dr Lam's assessment, Dr. Brown had recommended that Dr. Lam's findings should:

*"inform the goals and directions of treatment and that these findings be used to inform the goals and direction of treatment."*

It would have been of value to know whether Dr. Brown still stood by that recommendation for post assessment treatment in light of Dr. Lam's findings. In this regard, I note that after Dr. Lam's Expert Witness Psychological Report dated 12 October 2019, which was filed at Court on 14 November 2019, Dr. Brown was still submitting medical claims to F's insurers<sup>27</sup> stating that the diagnosis was "child sexual abuse, suspected" rather than simply outlining the therapy being provided. This is noteworthy because Dr. Lam in her report said that she had "found no signs that were indicative of abuse" and was recommending a different type of psychological treatment for Z. Having regard to her expressed diagnosis in the medical claims, it may be that Dr. Brown was not

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<sup>27</sup> For treatment on 18 November 2019 and on 25 November 2019.



accepting the conclusions and recommendations of Dr. Lam, although she had recommended that she be the instructed expert and that the parties should rely upon what Dr. Lam would suggest for the ongoing treatment for Z.

141. In light of what F's attorney was being told about Dr. Brown's views, understandably F sought and eventually, on 21 June 2019, obtained Dr. Brown's "file" in relation to Z. I have some concerns about the weight that can be placed on some of the material emanating from Dr. Brown that has been placed before this Court and especially on her interpretation of the events and views expressed therein, especially as Dr. Brown declined to file an affidavit and/or attend the hearing when her views could be properly explored. It may be that she took such an approach by relying upon her legal adviser's advice that:

*"As a nonparty, you are not required to participate beyond the limited way that you have done to date, and if (M) wants to introduce your evidence she will have to pay your professional costs of producing it, unless you agree to waive them. The fact that she is no longer retaining counsel suggests that she does not have the funds available."<sup>28</sup>*

As Dr. Lam rightly stated during her evidence, if a psychologist is concerned about safeguarding issues in relation to a child they are treating, she not only has a duty to report the same to DCFS/MASH but also to attend and inform the Court of the same in relevant child proceedings.

142. The Guardian indicated that when he reached out to Dr. Brown to tell her that he wanted to speak to her about her involvement with Z and that it was important that the Court

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<sup>28</sup> Email dated 21 January 2020 from Higgs & Johnson to Dr. Brown and Dr. Bodden at OnCourse.

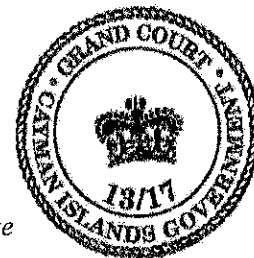


heard that her views, he found it "*strange*" that her first action was not to engage with him but as to refer him to the attorneys who represented OnCourse Cayman. He felt that there was hesitancy and reluctance from Dr. Brown and that she was unwilling to commit anything to an affidavit or to attend Court. The Guardian felt surprised that Dr. Brown, having referred to F as the "*accused perpetrator*" coupled with such a draconian recommendation that F should only have supervised contact for the foreseeable future was not willing to come to Court to explain that. The Guardian correctly noted that Dr. Brown's letter of 6 June 2019 was:

*"absolutely a significant turning point which changed the projector of this hearing"* and that a "*failure to attend to assist the Court in a child related matter is unprofessional.*"

143. The Guardian informed the Court that he had asked Dr. Brown whether she realised that she was only getting one side of the story and that in reply he got no indication from Dr. Brown that she recognised that. He said that Dr. Brown said that she could not speak to anything that happened outside of her office, including whether M had been coaching Z. That said, she did then go on to express a view to the Guardian that she did not think M had coached Z. The Guardian gained the impression from what Dr. Brown was saying to him that M was present during a lot of the sessions, which was troubling if Z was to be able to speak freely and openly. The Guardian said that he shared Dr. Lam's concerns that Dr. Brown appears to have jumped to certain conclusions without trying to take into account what might be causing the underlying issues for Z.

144. The Guardian insightfully states that whilst:



*“Dr. Brown genuinely wants to help (Z), she seems slightly reluctant to recognize the possibility that mother could be negatively influencing (Z) against the father... I do not think it prudent to rule out that possibility so readily in light of there being no ongoing investigations against the father. To focus purely on what is the source of discomfort in father’s home without also giving adequate consideration to what is happening in mother’s home, does a disservice to (Z)...”*

The only departure that I would have from this observation is that it appears that Dr. Brown is more than slightly reluctant to recognise that M is negatively influencing Z against the father, in fact, it is something that she seems unwilling to remotely consider. Although F’s frustration about the effect of Dr. Brown’s referrals on these proceedings is understandable, his label of Dr. Brown being “*an enabler*” or “*conspirator*” is not meritorious.

145. I note that Russell Simpson at MASH sent an email to Mrs. Robinson and to DI Ashworth on 17 June 2019, stating about the referral to them:

*“I have seen this and Kevin and I discussed it on Friday and it does not say anything to us other than the mother is trying to coach the child. There are no disclosures so at present we are not minded to subject the child to another interview.”*

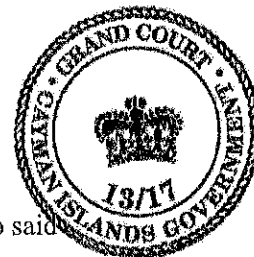
Importantly a clear indication that MASH still felt that there had been no abuse based on all of the information before them. Mrs. Robinson should be criticised for taking this on board in her assessment.

146. At 11:00 AM on 17 June 2019, Mrs. Robinson and another Social Worker attended at the school to speak to Z. M was at the school and she told them that Z had an appointment



with her therapist. M agreed to bring Z to the MASH Office at 3:30 PM to 3:45 PM to discuss the recent referral. Unfortunately she did not arrive until 5:10 PM after Mrs. Robinson had left.

147. The interview eventually took place on 21 June 2019 between 3:40 PM and 4:25 PM, but only after M had been provided with answers to her questions about the interview process including the identity of the interviewers. Z was interviewed by Ms. Melissa Alexander and Social Work Manager Tiffany Myles with Mrs. Robinson observing through a one-way mirror. It was felt that Z built up a good rapport with those in attendance and she was relaxed, comfortable and enjoyed participating in the games. Z was asked if anything made her uncomfortable or sad and she replied: "Hmmm, no." She was asked if anything scared her and she said that she was scared of the dark, so she has a lava-light on in her room at M's house. Z added that there was nothing scary at her old and new schools, but that there was something scary at F's house adding that: "I don't want to talk about it." Z said that she had not told anyone, including M about what she is scared of at F's house. She later was asked twice whether the scary thing at F's house and whether it was a person or a thing and she said twice without hesitation that it was a thing and not a person. She said after talking about being scared of the dark that the thing she is scared of is "all over" F's house. She was then asked whether she could see it, smell it or touch it and she said: "no", adding: "but it can touch you" and that nobody is with her when it touches her. Z said that she had learnt about safe and unsafe touch at school, highlighting that private parts are places that are unsafe to touch as well as kicking being an unsafe touch. Z said that she knew the names of private parts but she did not want to share them because the names made her laugh. Importantly Z said that no one had ever touched her



somewhere that is unsafe and that if that happened she would tell someone. She also said that she feels good about her father and about her mother.

148. Following on from the interview in which no disclosure was made, DI Ashworth arranged a meeting with Dr. Brown and Dr. Watkin with Mrs. Robinson and Ms. Tiffany Myles the MASH manager also in attendance. MASH felt that the doctors were not able to confirm that Z had been sexually abused, although they could not be certain and retained concerns. It is clear that MASH and DCFS felt that they had adequately investigated the referral and no action was required. They had grave concerns that the pressure was being placed on Z and therefore what M was reporting that the child had said could not amount to disclosure and any comments were likely due to pressure being placed on Z. However, the Court, despite the views disclosed at the time by DCFS and MASH that there was no evidence of sexual abuse, felt unable to progress with the final hearing without an assessment due to the nature of the concerns raised by Z's treating Psychologist.

149. I note that Dr. Brown did, through Higgs & Johnson at 11:18 AM on 9 July 2019, indicate that she was available to come to Court on 29, 30 or 31 July 2019. I am not clear why she offered those days as they were non-hearing dates, as the final hearing had since 28 May 2019 been re-scheduled for 9, 10, 15 July 2019. On 9 July 2019 the matter had been adjourned for further case management on 15 July 2019 at which time it was hoped that there would be some clarity about the appointment of a single joint independent Child Psychologist. Higgs & Johnson added in the same email:



*"Although she is happy to assist the Court in any way she can. I'm not sure what capacity it is proposed that Dr. Brown should attend the hearing. She has not provided any witness statement, as the treating physician it would be wholly inappropriate for her to act as an expert witness."*

It had been made clear to M and her attorney that if M sought to rely upon what Dr. Brown was stating or the material Dr. Brown was producing that she should properly present the same and call Dr. Brown as a witness. The fact that M wanted Dr. Brown to provide evidence in written and oral form should have satisfied Dr. Brown and her attorneys that she was able to give oral and written evidence before this Court without canvassing a requirement that there needed to be a subpoena.

#### **Background - Court Welfare Officer's Second Report on 8 July 2019**

150. Mrs. Robinson filed her Second Report on 8 July 2019. In the report she outlined events that had occurred between 29 May 2019 and 3 July 2019. These events included M's withholding contact on 30 May, 1 June, 2 June, 8 June, 9 June and 16 June 2019. The report notes that in early June 2019, M wrote to the Managing Director of DCFS expressing her concerns about Mrs. Robinson remaining as the allocated Social Worker and again on 17 June 2019 requesting her removal from the case. In her conclusion Mrs. Robinson felt that M's "defiance" of Court orders was "startling" and "an indication that (M) believes that she is above the law". She added that:

*"...while it seems that there is no issue with (M) functioning as a parent, this may change if she continues in her quest to prove that (Z) was sexually abused by (F). This is where the danger and risk to (Z) lies if she remains in the care and control of (M)."*



Mrs. Robinson then went on to recommend a residence order be made to F with agreed contact between Z and M.

**Background - Vacated Final Hearing Scheduled for 9 July 2019 and the Interim Contact Hearing on 15 July 2019**

151. As the 9 July 2019 hearing could not proceed, some directions were given. The first was that a Guardian ad Litem be appointed for Z. Mr. Holland was appointed on 11 July 2019<sup>29</sup>. The second direction was that the parties should prepare a draft joint letter of instruction in relation to a single joint expert to conduct a psychological assessment of Z and thereafter attend at Court. The matter was then adjourned to 15 July 2019.
152. On 15 July 2019, the Court heard a contested interim contact hearing. M still had legal representation at the time<sup>30</sup>. F's primary position at the hearing was that he should have unsupervised contact, but if the Court was not in agreement then he contended that his wife should be the 'supervisor'. M was not opposed to supervised contact, but said that it should not be supervised by F's wife but by Mrs. Seagraves who is an independent Social Worker. Although it was at an early stage of his appointment as Guardian, Mr. Holland informed the Court that, from what he had read and from the evidence given in Court at the hearing, he did not see any particular issues or concerns about F's wife being the supervisor.

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<sup>29</sup>On 9 July Mrs. Rosie Whittaker Myles was appointed as Guardian ad Litem. However, it was soon disclosed that she had been approached by M in June 2019 "about the possibility of identifying an attorney to represent her child", and Mrs. Whittaker Myles declined the appointment.

<sup>30</sup>By Ms. Katherine Muldoon at McGrath Tonner, who had taken over from Ms. Kirsty Leedam in the same firm. On or around 2 August 2019 there was a change of attorney to Mr. Laurence Aiolfi of Priestleys. It appears that Mr. Dilliway-Parry of Priestleys took over carriage of the matter for M.



153. M sought to rely on a comment made by F's wife, namely that the allegations being levied against F were a "complete load of bollocks", to oppose her remaining as the supervisor contact. M was submitting that F's wife was blinded by loyalty to F, and did not have sufficient understanding and insight about the concerns of abuse. I am satisfied that it was unfair for M to again twist the circumstances out of context to support her arguments. I accept F's wife's evidence in cross-examination on 15 July 2019, which was not challenged. She said that M invited her to meet with her and what followed at the meeting was the wife having to endure a pretty much one sided presentation from M during which M spent about 20 minutes telling her how awful F was, that she was convinced he would hurt Z and that she had known F for a long time. F's wife said that:

*"After this 20 minutes one sided stream of talking she asked me what I think about it, I said it was a load of bollocks."*

She then told the Court that:

*"I obviously understand the seriousness and the position of (this) very much. (The) fact I do not believe in the accusation, I am not going to lie about it. I take it very seriously and I have, and did everything up to now."*

154. The Court ordered that interim contact should remain supervised. I was conscious of the material before me emanating from Dr. Brown in which she indicated that, from her observations and from what she had been told, Z may have suffered trauma due to F's alleged abusive conduct. Although I had concerns about Dr. Brown's observations, about her not attending the hearing on 15 July 2019<sup>31</sup> and about the fact that the materials emanating from her were not presented in a proper evidential form, I felt that what she

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<sup>31</sup> Higgs & Johnson, although aware that the hearing date was 9, 10, 15 July 2019, stated that their client would be only available to attend on 29, 30 and 31 July 2019.

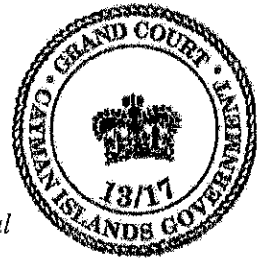


had disclosed could be relevant to Z's welfare and that before a Court could order unsupervised contact an independent psychologist was required to assess and report. I re-emphasised to the parties that in cases where sexual abuse allegations are raised at interim contact hearings, a Court will ordinarily feel compelled to err on the side of caution if the assessment is not complete and significant psychological evidence is awaited.

155. After hearing F's wife's evidence at that hearing, I ordered that she should remain as the supervisor. In my Ex Tempore Ruling I commented about F's wife that:

*"...on the evidence I have heard from her, I found her to be impressive, as I felt (her) to be child centric. It is not an easy position for a partner to be in, where the relationship between the natural parents has broken down. On one hand naturally that partner would support her partner, especially if serious allegations made.... They would be trying to balance their relationship with the other party that, which is in this case is the mother, which of course can be difficult. This happens in a number of cases. I do feel that she has sensitivity and understand(s) (what is) required of her. She did say to the mother that she thought that the allegations being levied against the father were a "complete load of bollocks." By using that phrase, she did that (s)he put that into context, that it came at the end of what she said was....after what she perceived to be over 20 minutes of criticism from the mother about the father, not being able to get a word in. Despite that, when it quite rightly was put in cross examination, I am satisfied that she 'gets it' and that even if she doesn't agree with the nature of the allegations she recognises that her responsibility would be to safeguard the child and to make sure that contact took place. The way that contact took place whatever may have gone on in the past.*

*At least until late May, the mother felt that this lady was a suitable person to supervise contact. I presume that, to her credit, the mother must recognise some of the positive traits that (I) recognised in (that) person today.*



*...From what I have heard from (F's wife) today, she seems to have a natural relationship with (Z).*

*...I do feel that this is the case in which the court can rely upon (F's wife) to supervise the contact."*

My views about F's wife's suitability to supervise contact or to care for Z for extended periods of time in tandem with F have only been fortified by the additional oral evidence she has given at the final hearing. On both occasions that I have heard her give evidence and be cross-examined in these proceedings, I have been struck by how levelheaded she is despite the pressure put on her relationship and also by how motivated she is to act in Z's best interests.

156. At the July 2019 hearing, supervised contact was fixed for 18 July 2019 1:00 PM – 6:30 PM, 24 July 2019 3:00 PM – 6:00 PM, 27 July 2019 10:00 AM – 6:00 PM, 1 August 2019 3:00 PM – 6:00 PM, for August 2019 10:00 AM – 6:00 PM, 6 August 2019 3:00 PM – 6:00 PM. Thereafter, the contact schedule should continue on Wednesday 3:00 PM – 6:00 PM, Saturday 10:00 AM – 6:00 PM, Thursday 3:00 PM – 6:00 PM and on Sunday 10:00 AM – 6:00 PM. rotation until further order. The drop-off and collection of Z was ordered to occur at a restaurant in Grand Harbour, except for pickup on weekdays after school resumes.
157. It was also agreed at that hearing that, before 18 July 2019, Z would be informed by a Social Worker, other than Mrs. Robinson, that the contact with F was to resume. An appointment with DCFS was to be arranged to enable the Social Worker's meeting with Z to occur. On 17 July 2019 Melissa Alexander, a Social Worker with DCFS and MASH,



met with Z to inform her that contact with her father was going to resume. At the time when Z was being informed M was allowed to be in an observation area where she could see and hear Z, but where Z could not see or hear her. Mrs. Alexander reported that Z:

*“was informed about the boat trip and expressed excitement. She was asked on a scale of one to 10, with 10 been very excited and one being not excited, how she felt about the information, and she said: “10”.”*

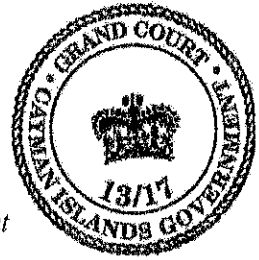
Unfortunately it appears that M was not willing to accept that Z would wish to spend time with F to that degree, as she questioned Z in her car after the boat trip about whether the ten figure had been accurately reported.<sup>32</sup> M told the Guardian that Z replied by giving her a much lower figure. M also told the Guardian that Mrs. Alexander had been the one who raised “*ten out of ten*” with Z, to which Z replied “*no*”. M said to the Guardian that this is an example of DCFS misreporting. Having had the chance to hear and see the witnesses, I find that Mrs. Robinson was accurately reporting this. One has to ask why M would deem it appropriate to question Z about the figure and undermine an enjoyable day Z had with F, save to try and show that Z did not want to greatly see F as that was inconsistent with M’s sexual abuse belief and/or to argue that DCFS were misrepresenting the truth. Regrettably, this is another instance of M failing to understand that Z when questioned on such matters by her is likely to give M the answer which Z felt M would wish to hear and also that it undermines Z’s relationship with F.

### **Background – Contact Issues Post Hearing 15 July 2019**

158. During her evidence in chief at the 15 July 2019 hearing, F’s wife commendably stated:

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<sup>32</sup> Referred to in paragraph 15 in the Guardian ad Litem’s Report



*"I understand my duty and first responsibilities and duty is to (Z) and that supersedes any loyalty (I) may have had to the father."*

Despite that and despite M having had the opportunity to cross-examine and hear F's wife evidence at the hearing, and having heard my Ex Tempore Ruling, M still deemed it appropriate to instruct her attorneys, very soon after the hearing, to write to F's attorneys on 18 July 2019 to seek confirmation from F's wife that she understood that the supervision order was in force and to ask what F's wife understood supervision of contact to entail. F's Counsel when replying rightly reiterated that evidence had been explicitly given in Court under oath, and that there could be no reasonable doubt in anyone's mind that F's wife understood her duties. They added:

*"The only person who has expressed a lack of understanding of court orders, judgements and breached orders is your client."*

That answer was not felt to be sufficient by M and a further email was sent in relation to the same subject, which received a reply from F's Counsel that her client's wife understood her duties. This answer was also not sufficient to satisfy M and the following question was then put in a further email:

*"(i) please confirm what duties you explained to her and (ii) please confirm that she understands that there is a supervision order in place."*

In the context of what happened at the hearing and my ruling, no doubt exasperated by the repetitive questions, F's Counsel replied:

*"I explained her duties as were later addressed in evidence. She understands that there is a supervision order in place. The judge was satisfied that she understood*

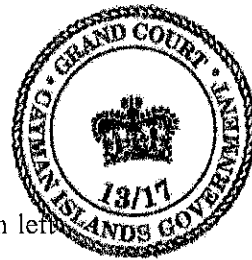


*and took her duties seriously..... Please exercise reasonable control over your client asking the same questions (or variants of the same) over and over again. ”*

I have little doubt that M’s Counsel sent the emails because she had been instructed to do so, rather than acting on her own initiative. I am afraid this is yet a further example of M’s rather compulsive information gathering approach to these proceedings and her wish to be in control of contact arrangements.

159. There was also a series of emails sent by M to F’s wife around 3 August 2019 about whether Z had diarrhoea during the last contact visit and whether the wife had gone into the shower whilst Z was there. M seemed to be suggesting that the two were linked, possibly causing anxiety for Z. The wife in an email in reply, said that she did not notice any diarrhoea and that she did not take a shower, but had changed from a wet bikini into dry clothes. M then took her investigation further and deemed it appropriate to ask Z very direct questions about this. She provided that recording to F’s wife. Although brief, the questioning was highly inappropriate because in a terse voice M asked Z three questions, leaving no doubt what answer she wanted and expected to hear from Z. In the recording one can hear Z in a gentle voice providing the answer that M was seeking. This is a further example of M trying to obtain evidence to support her case, but was doing it by improperly drawing Z into the dispute and putting pressure upon her.

160. Before I move away from M’s questioning of F and his wife about supervised contact, further issues arose in September 2019. Mr. Aiolfi, who had very recently come on record as M’s attorney, wrote to F’s attorneys on 5 September 2019, stating that he had



been advised by M that Z had reported that on a recent contact visit<sup>33</sup> she had been left alone in the bedroom with F while his wife went to change. Mr. Aiolfi reminded F's attorney that the order for contact was that it be supervised and that all future contact sessions should be properly supervised. There has to be a degree of realism about and common sense adopted concerning what the Court intended about the supervision of contact in light of the Court's earlier observations about the mechanics of the supervision. F's Counsel's forthright reply was understandable. Counsel stated:

*"I can confirm that (F's wife) changed her clothes and while she did so left the door open. For full disclosure at one point she also used the bathroom. Please note that no further questioning on this topic will be entertained. While this may appear, at first blush, to be harsh your client has a long and protracted history of endless questioning of many people (including (Z)) over minutiae. My client and (his wife) have continued to demonstrate compliance with the expectations and wishes of the court."*

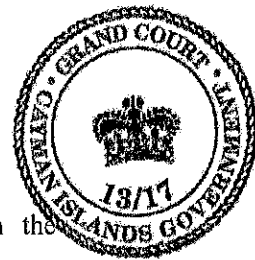
This reply was clearly not felt to be sufficient for M, so her attorney further wrote:

*"...please confirm urgently by return, that (Z) will not be left alone with her father unsupervised for any length of time at all during any further scheduled contact visits. The order does not envisage that supervision will be sporadic as it suits the needs or convenience of (F's wife) or your client. The issue of supervision is of paramount importance given the nature of these proceedings and must be strictly adhered to."*

To which a reply was received that F and his wife were committed to supervised contact in compliance with the order and confirmation was sought about what M believed should happen about supervision if the supervisor has to take a comfort break. Again, this series

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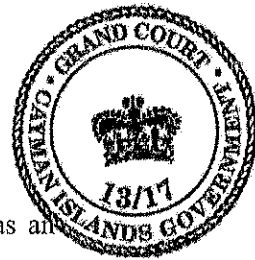
<sup>33</sup> On 4 September 2019.



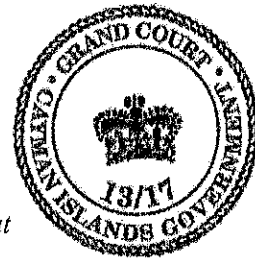
of exchanges highlights the unreasonableness of M's unrealistic approach in the circumstances.

#### **Appointment of Dr. Lam and Her Assessment**

161. At the 15 July 2019 hearing directions were given in relation to the appointment of Dr. Lam as the single joint expert, but they included a provision that if F objected, then Dr. Sophia Chandler could be appointed. At the hearing it was indicated that the psychologist was to be appointed to examine Z and report to the Court in respect to a) the allegation by M of sexual abuse and b) the potential emotional harm being rendered to Z, arising from the disruption of the father/daughter relationship, especially if it is found that the allegations of M are without substance. The parents and the Guardian were to agree a joint letter of instruction within seven days and each parent would bear 50% of the cost of the expert.
162. The background to Dr. Lam's appointment is relevant (i) due to F's concerns about lack of impartiality and objectivity from medical practitioners retained by M to that date and (ii) because, although M was the party that had forcefully advocated for Dr. Lam to be instructed, M does not now accept her conclusions and challenges her credibility, her methods and her expertise. Dr. Lam had been approached by Dr. Brown in February 2019 to seek details regarding her services as an expert witness. Following this approach, Dr. Lam gave a five-minute free consultation, in which she explained the role of expert witnesses and that the appointment would be in order to answer specific questions in the best interests of the child.



163. In June 2019, Dr. Brown provided an anonymous draft of a letter asking if it was an appropriate referral. In the letter, Dr. Brown had recommended an independent psychologist *"to explore the internal world of the child"*. Dr. Lam agreed that it was an appropriate referral based on the draft of the letter.
164. On 5 June 2019, M's attorney contacted Dr. Lam regarding her expert witness services and sought a quote. It appears that by 11 July 2019, Dr. Lam had indicated to M's attorney that she could file her report by 19-20 August 2019 at the latest.
165. On 27 June 2019, M filed her Summons seeking a direction that Dr. Lam be instructed as a single joint expert.
166. In July 2019, Mrs. Robinson and her colleague, Ms. Sherine Barnes, called Dr. Lam to seek advice about *"an anonymous case"*. Dr. Lam was told that they were investigating an alleged safeguarding concern relating to a young girl and thought that due to her expertise she might prove helpful in *"understanding the internal world of the child and the dynamics between families"*.
167. Prior to the matter coming before the Court on 15 July 2019, F was still unsure about whether he could agree to Dr. Lam being appointed. It was stated on his behalf that he had:
- "...previously objected (to her appointment) pointing to a troubling history of contact between M and professionals, particularly Dr. Brown. Dr. Brown has been in contact with Dr. Lam about this case and received guidance from her. F is anxious to ensure that the process is absolutely fair. Attempts to contact Dr.*

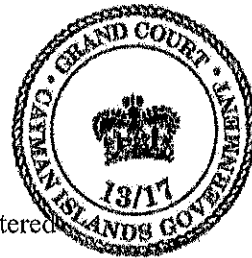


*Lam to ascertain what information had been relayed to her. Those attempts at contact were not successful.”*

168. On 16 July 2019, F emailed seeking an opportunity to have a discussion with Dr. Lam about the case. Thereafter, although Dr. Lam had been consulted and recommended by Dr. Brown and although it was M requiring her to be appointed, F had sufficient insight to recognise that Dr. Lam would be an appropriate expert to carry out the assessment primarily sought by M. The only additional area that F sought to be included in M’s requested assessment was that Dr. Lam should also assess any emotional harm that M might have suffered or may suffer as a consequence of the disruption in F’s relationship with her, especially if the allegations made by M are found to be without substance.
169. M changed her attorney<sup>34</sup> soon after the July hearing and this caused a delay in the agreed letter of instruction being sent to Dr. Lam. It was received at Dr. Lam’s office in the week of 12 August 2019. On 29 August 2019 agreement about the fees and timeline was reached and the assessment commenced on 5 September 2019. Dr. Lam informed the parties about her findings at separate meetings in the week of 7 October 2019. Dr. Lam’s Written Assessment Report was completed on 12 October 2019. F paid his 50% share of the costs of the assessment promptly. In an email dated 22 October 2019, M sought release of the videos of the session in the assessment, but also regrettably she refused to pay her share of the invoice, which meant that Dr. Lam would not release her report. As a consequence, F paid for balance of the invoice on 23 October 2019.

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<sup>34</sup> McGrath Tonner came off the record on 26 July 2019 and Priestleys came on the record for M on 31 July 2019.



170. Dr. Lam is a Chartered Psychologist, Registered Clinical Psychologist and a Registered Expert Witness with the British Psychological Society. She is registered by the Council for Professions Allied with Medicine in the Cayman Islands and the Health and Care Professionals Council in the UK. Importantly, having regard to the issues in this matter, Dr. Lam's specialist field is psychological trauma and attachment, an area in which she has practised for almost 16 years. In her report Dr. Lam sets out her academic and professional background in great detail. Having regard to her disclosed qualifications and experience, as well as having had the opportunity to consider her written reports and hear her give evidence, I can see why Dr. Brown recommended Dr. Lam to be the assessing psychologist in relation to Z. Despite M's changed views about Dr Lam's suitability, I have no hesitation in determining that Dr. Lam is an expert in the field.

171. Although M was following a trend that has existed throughout these proceedings, namely forcefully challenging the expertise of professionals who do not agree with the narrative M wishes to present, I was still surprised when at the hearing M challenged Dr. Lam's suitability to be the expert in this matter, as well as her expertise as a psychologist assessing and treating children with potential trauma. M stated in her oral evidence that:

*"After a certain point (Dr. Lam) was entrenched in her position that I am the fire that needs to be put out. ... Entrenched in her position in the Court room. I do not think that Dr. Lam has performed within code of ethics."*

M, based upon her own research of literature that she felt supported her position that there was evidence of abuse, but not backed up by any other witness, strongly criticised the assessment techniques used by Dr. Lam. It should not be forgotten that Dr. Lam is the expert that M and her then attorneys, adopting a recommendation of Dr. Brown,



persuaded the Court and F to appoint as the jointly instructed expert. Given the fact that she was a jointly instructed expert, the Court had hoped that both parties (particularly M who had been adamant that Dr. Lam should be instructed) would have been guided by the conclusions and recommendations, a post-assessment approach which had been commended by Dr. Brown

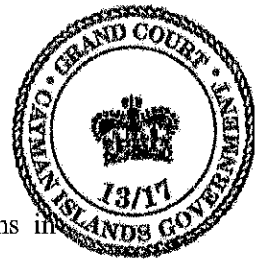
172. In her report Dr. Lam noted that the purpose of the report was to explore the allegations of sexual abuse and emotional abuse and the psychological impact on the child. She set out the scope of instruction as follows:

- Whether in her professional opinion, Z has suffered from any type of emotional trauma caused by F;
- Whether in her professional opinion, Z has suffered from any type of emotional or physical harm caused by M;
- In her professional opinion, what is the quality of the relationship between each parent and Z;
- Whether in her professional opinion, any issues of parental alienation are present;
- Whether in her professional opinion, any damage has been caused to Z;- and if so, by which party;
- Whether in her professional opinion, either parent's actions may cause emotional harm in the future;
- Whether in her professional opinion either parent has sought to create an unwarranted negative opinion of the other parent; and
- Whether in her professional opinion either parent's actions have not been in the best interests of Z.



173. I do not accept M's contention that a comprehensive assessment was not carried out or that the various assessment methods used were not fit for purpose in the circumstances of this case. Dr. Lam had reviewed the supporting documents provided by the attorneys (including material from Dr. Brown and Dr. Watkin) as well as an intake questionnaire from both parents. She then had semi-structured interviews with both parents on four separate occasions, two with each parent. In those sessions she focused on the parents' concerns, their views about the background of the case, the history of Z, as well as on each parent's background and parenting styles. She had semi-structured face-to-face interviews with Z's teachers and the same on the telephone with Mrs. Robinson and Dr. Brown. She observed Z in a natural setting at her school for one hour over lunch, transition and playing in the playground. Dr. Lam had three individual sessions with Z including a play based assessment and projected personality measure tests. Importantly, she also had separate parent-child assessments in which she was able to assess interaction between Z and her parents. Prior, during and after the hearing, I had the benefit of watching the videos of the parent-child assessment sessions. The videos gave an invaluable insight into Z's interaction with her parents and, importantly in the circumstances of this case, also insight into the appropriate bond between Z and F which this Court must strive to protect.

174. Dr. Lam also conducted a number of clinical tests including adverse childhood experiences, projected measures, parenting skills, Trauma Symptom Checklist for Young Children, Behavioural Assessment Scales for children 3rd edition and Marshack Interaction Method.



175. Dr. Lam shared her clinical impression of each of the parents. Her observations in relation to M are highly consistent with those made by this Court at different stages of the proceedings. She noted that at the first appointment M became understandably tearful and was:

*“distracted by explaining how the system of safeguarding reporting was letting her down and how the collected evidence was dismissed, which made it very difficult for her to answer questions about the background and history of Z.”*

In relation to the second interview Dr. Lam recorded that M:

*“was equally distracted in explaining her concerns about safeguarding issues and her focus on the chronology of the events.”*

In her oral evidence Dr. Lam stated that M had a “*strong focus*” on proving her theory or allegations and was unable “*to see the bigger picture*” in relation to the situation. She felt that some of M’s affidavit evidence mirrored M’s conversations with her, with M giving details “*almost like a description of day to day*”. Dr. Lam then added that:

*“Usually when I get this is when people have not moved on, cannot make sense of something, the narrative they use to describe the events can be minute by minute, event after event, without much reflection.”*

176. I found the below insightful observations<sup>35</sup> of Dr. Lam to be most telling. They go to the root of this Court’s concerns in relation to M. These include the manner in which she has set about in her mission to elicit evidence to support her rigid belief that Z has been sexually abused by F, including her inappropriate questioning of Z. Since February 2019 M has come at the case from the premise that sexual abuse has occurred and therefore she

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<sup>35</sup> Paragraph 177 herein.