

IN THE EAST LONDON FAMILY COURT

11, Westferry Circus,  
LONDON,  
E14 4HD

Date: 21<sup>st</sup> May 2019

Before :

**HER HONOUR JUDGE CAROL ATKINSON**  
**(sitting as a Deputy High Court Judge)**

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Between :

**AN EAST LONDON BOROUGH**

**Applicant**

- and -

**MOTHER**

-and-

**FATHER OF SARAH**

-and-

**FATHER OF PATRICK**

-and-

**SARAH AND PATRICK**  
**(by their Children's Guardian)**

-and-

**MATERNAL AUNT**

**Respondents**

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Mr Christopher Poole for the Local Authority

Mr Islam for the 1<sup>st</sup> Respondent.

Miss Farah Ramzan for the 2<sup>nd</sup> Respondent.

The Fauther of Patrick being excused attendance and not being represented.

Mr Amarjit Ryatt for the children through their Children's Guardian

The Maternal Aunt appearing in person.

Hearing dates: 8-12 April and 21 May 2019

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**JUDGMENT**

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## HER HONOUR JUDGE CAROL ATKINSON :

### Introduction

- 1 On 28<sup>th</sup> August 2017 a three-and-a-half-year-old girl called Sarah was presented at a Hospital's emergency department by her parents with serious injuries to her genitals. The doctors considered that the child had been subjected to an attempt at female genital mutilation (FGM). So it was that the Local Authority, an East London Borough, issued proceedings for care orders in respect of the child and her older brother, Patrick, then aged 9.
- 2 The parents denied that they had deliberately harmed Sarah, maintaining that she had suffered an unwitnessed straddle injury falling onto the top of a kitchen cupboard door as she climbed to get herself a biscuit. Patrick, who was in the flat at the time of the incident repeated the same account though he had witnessed nothing directly.
- 3 On 12<sup>th</sup> July 2018 after a lengthy hearing, I made findings that were summarised in the following way:

*I am satisfied that the injuries suffered by Sarah to her genitalia were deliberately inflicted and were not caused by a fall. I am satisfied that these injuries amount to a mutilation of Sarah's genitals and are consistent with an attempt at type 2 FGM.*

*There is no dispute that the injuries occurred whilst Sarah was in the care of her parents. There is nothing that would enable me to be satisfied that it was one or other of them; nor is there sufficient evidence for me to be satisfied as to the presence of a third party, although I should add that neither am I satisfied that there was no other person there. I am satisfied that both parents were involved.*

*Turning to the additional matters, I find that Patrick has been coached in the false account that the family has maintained.*

- 4 Shortly after the conclusion of that hearing, the parents were charged with female genital mutilation, contrary to s 1(1) of Female Genital Mutilation Act 2003. Further the parents were charged with offences relating to extreme pornography and child pornography. The criminal trial commenced at the Central Criminal Court (CCC) on 14<sup>th</sup> January 2019. The trial Judge was Mrs Justice Whipple. The day before the commencement of the trial, Patrick wrote a letter to his social worker and to the police. The terms of those letters are virtually identical. The purpose was to inform them that he had not been truthful in his previous accounts given in ABE to the police and that now he wanted to 'prove' that his mother had cut his sister.
- 5 Patrick was ABE interviewed for a third time on the first day of the trial (14<sup>th</sup>). He confirmed that he had not been truthful when interviewed before. I will return to his full account in due course but essentially, he described hearing Sarah scream and seeing her emerge from her mother's bedroom bleeding heavily. He stood by his account that his stepfather, Sarah's father, was in the garden at the time. Whilst agreeing that he did not witness what had happened he made it clear that he considered that it was his mother who had cut Sarah and that he had repeated the story

of the fall after hearing the adults say it. He also, quite spontaneously, alleged that he had been beaten by his mother in the past.

6 At the conclusion of the criminal trial the mother was convicted of the charges but the father, Sarah's father, was acquitted. The mother was sentenced to 11 years custody for her role in the mutilation of her daughter's genitalia.

7 Sarah's father returned to this court indicating that it was his wish, in the wake of the acquittal, to apply for the care of both children. He was reminded that my findings against him as to his role in Sarah's mutilation remained. Those findings, made to a lower standard of proof, are not overturned by the acquittal. Accordingly, Sarah's father seeks to re-open the fact finding in this case inviting me to consider the account given by Patrick and find that he played no role in the mutilation of his daughter and further that he did not fail to protect her in the circumstances of this case.

### **Re-opening findings of fact: the law**

8 I have already referred the parties to the guidance given by the former President on the proper approach to the review of findings of fact in care proceedings in the case *Re ZZ and Others [2014] EWFC 9*.

9 In that case the President, as he then was, broadly approved the three-stage approach set out by Charles J in *Birmingham v H and Others [2005] EWHC 2885*. The three stages are these:

- i) The court considers whether it will permit any reconsideration or review of, or challenge to, the earlier finding. The court does not get beyond this stage unless there is some real reason to believe that the earlier findings require revisiting. As the President observed in *Re ZZ (supra)* "*Mere speculation and hope are not enough. There must be solid grounds for challenge. But for my part I would be disinclined to set the test any higher.*"
- ii) The second stage involves a consideration of the extent of the investigations and evidence concerning the review;
- iii) The third stage is the hearing of the review itself.

10 I have already considered the first stage of the process at an earlier hearing. At that stage I was without the full detail of Patrick's ABE interview but it seemed to me that the letters written by Patrick in advance of the criminal trial could be said to found grounds for challenging the findings made against Sarah's father.

11 As I have said, ordinarily, the mere fact of an acquittal in a criminal court would not be sufficient to dislodge or even justify reconsideration of findings made in the family court on a different standard of proof. There is no automatic conflict between findings made by a Judge on the balance of probabilities and the inability of a jury to be satisfied to the criminal standard on the same facts.

- 12 However, in this case, the jury had other evidence which was not available at the trial before me and which may, it was argued, have a bearing upon my assessment of the evidence as a whole resulting in different findings so far as the father is concerned. The first part of the test was therefore crossed.
- 13 Moving onto the second stage, there has been extensive consideration given to the scope of the review of the evidence necessary to do justice to the parties in the case. No challenge was made by Sarah's father to the medical evidence or any part of it. The only evidence necessary was that of Patrick, in whatever form it came, and the evidence of the parents given in the light of Patrick's altered account.
- 14 This hearing then has focused on the third stage of the enquiry. What arises from the aforementioned authorities in relation to the third stage is a reminder that the legal burden of proof with regard to establishing the threshold remains at all times with the LA. I do not intend to re-direct myself on that issue. Reference can and should be made to what I set out in the first fact finding in this matter at paragraphs 12-16 of my earlier Judgment.
- 15 However, in circumstances such as this there is an evidential burden on those who seek to displace an earlier finding. As the President explained in *Re ZZ* "*in that sense they have to "make the running"*". I have to consider the fresh evidence alongside the earlier material before coming to a conclusion in the light of the totality of the material before the court.

### **The evidence**

- 16 I have seen the letters from Patrick and I have watched his ABE interview. I have also re read the previous ABE interviews. At the CCC, Sarah's father requested the attendance of Patrick at court to give evidence but Patrick refused. In these proceedings I invited any party wishing to cross examine Patrick to make a proper application for his attendance and directed the Guardian to file a 'Re W' report. The Guardian advised that Patrick did not wish to give evidence and that it would be contrary to his interests for him to do so. In the event, no party has required his attendance. I bear in mind therefore that the evidence that I have had from Patrick is hearsay and that this evidence has to be approached with caution. It has not been tested in cross examination. I will return to this in more detail below.
- 17 The medical evidence remains as it was before me. As I have already indicated, there was no suggestion by any party that the experts should give evidence again. Accordingly, I refer in particular to paragraphs 33-45 of my previous Judgment.
- 18 I have had disclosed a copy of a further experts report from the consultant forensic pathologist, Dr Rouse. Dr Rouse was instructed by Sarah's father's defence team. He carried out his own analysis of the papers and concludes very firmly that this was an attempt at FGM, that the experts in the case had it right and that these injuries were not straddle injuries and could not possibly have been caused by a fall onto a door top as suggested by the parents. That report (dated around Oct 2018, so coming after my fact finding but before the criminal trial) was not disclosed into the criminal proceedings.

- 19 The only fresh oral evidence that I have heard has come from the mother and Sarah's father. The mother has had little to add as her position remain the same. The important evidence therefore has come from Sarah's father himself and I shall set that out in some detail in a moment.
- 20 I have in the Bundle transcripts of parts of the criminal trial. Specifically, the evidence given by Sarah's father, has been of most interest. I have read the evidence given by Sarah's father but I have only skimmed the remaining transcripts.
- 21 It was accepted by Sarah's father in the criminal trial and also before me that he had not been truthful on occasions during the course of the fact-finding hearing. I will set out the various examples in due course but remind myself of the Lucas direction set out at paragraph 16 of my last Judgment.

### **Decision**

- 22 Standing back and re-examining the facts of this case in the light of the limited fresh evidence, I am quite satisfied that the findings that I have already made are sound and should remain. I am not satisfied that the mother was the sole perpetrator of these injuries. I remain of the view that the injuries suffered by Sarah could not have been inflicted by one person unassisted. The parents continue to maintain that there was no other person in the flat and therefore no one able to assist whoever cut Sarah leaving the mother and Sarah's father both very firmly, in my view, in the pool of perpetrators.

### **Static factors**

- 23 The place to start, it seems to me, is with the facts that are not subject to challenge because they are agreed and with the facts that are not capable of challenge because they are findings made by me on a previous occasion but are unaffected by the limited scope of my fresh evidential enquiry. Those facts form the static factual matrix within which I will assess the fresh evidence.
- 24 Those facts can be summarised as follows:
- a. On 28<sup>th</sup> August 2017, Sarah's genitals were deliberately cut and thereby mutilated.
  - b. There was no surgical or medical reason for this mutilation.
  - c. The mutilation was consistent with an attempt at Type 2 FGM.
  - d. On the facts of this case, whoever inflicted these injuries could not have done so alone.
  - e. The mutilation took place at a time when the mother and Sarah's father were both 'at home' with the children. In short, she was in the care of both of her parents.
  - f. Both parents agree that there was no other adult in the home at the time.
  - g. The mother was convicted by a jury of inflicting these injuries or allowing them to be inflicted.
  - h. The father was acquitted by a jury of inflicting or allowing them to be inflicted.

## Dynamic factors

### Patrick's account

- 25 Let me start with the evidence before the court on the last occasion from Patrick:
- a. On 28<sup>th</sup> August 2017, when Sarah was admitted, Patrick was reported by hospital staff to be crying. He kept saying: “*My sister is going to be taken away from us, I don't want my sister to be taken.*” It is not unreasonable to observe that he clearly had some sense of the significance of events in terms of the view that might be taken of her injuries by others.
  - b. Two days later he was ABE interviewed for the first time. Patrick gave an account of the fall from the kitchen cupboard. He placed Sarah's father outside in the garden initially with his sister. He described that Sarah wanted to get a biscuit, she went in to get a biscuit and in some detail (given that he did not witness this) described how with biscuit in hand she then fell onto the kitchen cupboard and dropped the biscuit on floor. When asked if he had seen this happen he said ‘*no one saw it*’ but remarked that there were biscuits all over the floor. He told the officers that he was in living room with his mum watching BGT.
  - c. At two subsequent ABE interviews on 08/09/17 and 27/11/17 he maintained that account.
  - d. In between the second and third interviews he wrote a letter to his parents saying that ‘*Sarah is very sorry for getting us into this..*’.

This was the evidence from Patrick when I made my findings in July 2018.

- 26 Following the fact finding I was informed that Patrick was said to be ‘angry’ at the outcome – verbalising that his parents had done nothing wrong. On 28<sup>th</sup> November 2018, I met with Patrick at the invitation of his solicitor and Guardian. Patrick had expressed a wish, as children often do, to meet with the person making serious decisions about their future. The purpose of the meeting was, as it always is, to meet with the Judge, see the venue in which the decisions are made, ask questions about the process. The purpose was not, as I explained to him from the outset, for him to give me information that could be considered evidence in the case.
- 27 It is worthy of note that at the time this conversation took place I had also made a finding that Patrick had been coached into a false account regarding what had happened on that day. On that issue, I said this ‘*He may have been directly exposed to what was happening, he may not. However, he must also have been told that there was an accident, and I consider it highly likely that he knows that the detail he has given is not correct*’
- 28 Patrick's solicitor took a note of the meeting and as Mr Ryatt has observed in submissions, Patrick was unusually pre-occupied at that meeting with the issue of truth and lies. He had a list of questions for me and appeared to be reading from a handwritten note that he kept carefully concealed under the desk in front of him. It was one of the most extraordinary meetings with a child that I have ever had. Patrick's questions about truth and lies revealed, in my view, an intelligent and

insightful child who was troubled by these matters. I want to set out some of the exchanges between us to demonstrate this.

Patrick: *Do people lie?*

Judge: *We've all lied at some point in our lives. Sometimes people lie because they are scared.*

Patrick: *Sometimes they lie because of the consequences.*

Judge: *Yes, sometimes they are scared of the consequences.*

Patrick: *If I was repeating the same thing again and again would you think I was saying the truth?*

Judge: *Maybe. But just saying something over and over again doesn't mean it's true. Sometimes it can be. Sometimes saying things over and over is because it is NOT true but you are trying to persuade me that it is. You can't tell whether something is true by just looking at the number of times someone repeats something.*

Patrick: *How do you tell if someone is lying?*

Judge: *You look at all of the evidence. Listen to what they have to say. Listen to what someone who says it didn't happen says. Look at everything. If you know from the evidence that something cannot happen then you cannot be sure it is truth.*

Patrick: *You can't be sure straight away because it might be true.*

Judge: *Correct. You have to listen to all of the evidence before making a decision.*

- 29 It was no surprise to me to learn that 6 weeks later Patrick would go on to give further information. On 13<sup>th</sup> January 2019, Patrick wrote two letters in almost identical terms, one to his social worker and the other to the police. He sets out that he was lying before, but that now he wanted to tell the truth. *'I'm going to prove that my mum cut Sarah...I was scared and young but now I'm older and ready to tell the truth because when you lie it's bad...My mum told me a lie and that was Sarah fell down, which made me lie a lot. Now I am older I know lying makes the problem harder for everybody....I feel really happy to live with aunt until I'm 18..I don't want to separate from my sister because she's so lovely to me and I want grow with my sister together ..'*
- 30 Patrick was re-interviewed the very next day – 14<sup>th</sup> Jan. I think it is important that I set out what Patrick said in his 40 minute interview in a little more detail because it is at the core of the application to re-open the facts of this case.
- 31 Patrick was asked by the officers *'How can you prove that your mum cut Sarah'*. He said: *'because she's been lying a lot....she don't want to get in trouble so she just lied'* He goes on to say that his mother lied about the falling down and in response to the questions *'who cut Sarah?'* he says *'my mum'*. However, he then accepts he did not see it happen.
- 32 Patrick is then asked if his mother told him to say Sarah fell down and immediately he confirms that she did but when that is explored further and he is asked when he was told to lie, what he was told and where he was told it, he says: *'No, she never told me. She's like saying it and I'm like okay I'm going to say that ...and then I just say it..'* Nevertheless, he clearly understood that he was to give the account that this had been a fall and given that this account involved him representing that the players were in different positions to what he had actually observed after hearing Sarah screaming, he must, I am satisfied, have known that this was a false account.



- 33 Patrick is then asked by the officers to revisit the events of that evening. He says he was in the TV room watching TV. When asked where Sarah was cut he says *'I think in the bedroom'*. He says that his mum was in the bedroom and nobody else. When asked where Sarah's dad was he says he was outside in the garden talking on the half landing just outside of the flat. He goes on to describe that he did not know what was happening in the bedroom but Sarah came out of the bedroom and there was *'blood all dripping the floor – she was crying - mum was in bedroom – then they called an ambulance'*. Sarah's father came in *'when he heard S scream – [the screaming] was really loud cos of her pain – [they] just covered her up with a towel.'*
- 34 Patrick was asked about the curious photo taken on the mother's phone on that day showing Sarah, partially undressed, on the bed in his mother's bedroom, Patrick in the background and the mother's forearm in the foreground. Patrick said that this was a photo of his mum and Sarah's father checking what had happened to Sarah's 'privates'. He told the police that at the hospital *'some cutting specialist ... said she was cut and she never fell down'*.
- 35 At the end of the interview he was asked whether there was anything he would like to go over and he then volunteered a series of allegations against his mother, none of which I am asked to consider but I include them because they may shed some light on Patrick's state of mind at the time. He alleged that his mother used to *'beat me a lot'*. He alleges that he was sent to buy alcohol for her.
- 36 I bear in mind that I have not been able to see Patrick in the witness box and assess him as a witness after he has been tested through cross examination. However, I have met him and I conclude from a combination of that meeting, his subsequent letters to the court and his ABE interview with the police that he is entirely genuine in his wish to put the record straight. I am satisfied that he is a boy who is very intent on telling the truth. However, I am also quite satisfied that what he is doing is telling the truth as he genuinely believes it.
- 37 I am quite satisfied that he believes his mother to be responsible for the injuries to Sarah. However, careful examination of what he actually says to the police reveals that it is still lacking in detail and cannot provide a full explanation of these terrible events. My strong impression is that this is a boy who is still on the journey of disclosure.
- 38 I note that even now he accepts that he did not witness the cutting of Sarah and so his assertion that he must 'prove' his mother did the cutting is not based upon the fact that he saw her doing that but rather on his assumption that it was she who was cutting his sister. He makes that assumption after seeing Sarah emerge from the bedroom bleeding and crying and her mother emerging after her.
- 39 Where that leaves me is a young boy with a heightened sense of injustice who is clearly concerned that he has been lied to with the result that he too has told lies. He is very concerned about his sister and his comments about her suggest that he is understanding of the pain that she suffered as a result of this.

- 40 He also confirms that the photo was taken by Sarah's father when they mother and Sarah's father were examining Sarah's injuries during which he was present and listening to their conversation I assume and directly contradicting the evidence of Sarah's father. Patrick does not suggest that there was anyone else in the flat that day. However, in keeping with the evidence of Sarah's father, Patrick also maintains his account that Sarah's father was outside on the half landing – not directly outside of the door but not out into the garden on the grass as Sarah's father suggests.
- 41 Whilst I accept that he seems to be clear that Sarah's father came in 'when he heard Sarah', he cannot know where from other than to say, not from the bedroom from where he saw his mother emerge. Is this another assumption on his part? The garden was where Patrick knew or had been told Sarah's father had been that day, watching videos of his mother's funeral. Patrick was not with him. Immediately beforehand he had been engrossed in watching the TV. This evidence is more difficult, particularly when considered alongside the unchallenged expert evidence that the mutilation was a 'two-person job'.
- 42 I turn now to the evidence of Sarah's father.

#### Sarah's father's evidence

- 43 Sarah's father accepted that his position in the earlier hearing that Sarah's injury must have been caused by a fall was no longer his position. He gave evidence in the criminal trial in January 2019 that he accepted that the injuries were caused by cutting and not as a result of accident. He did not reveal during that hearing that he had been persuaded into that position through the evidence of his own expert but that is not surprising. The report of Dr Rouse was not disclosed into the criminal proceedings, so far as I am aware.
- 44 The explanation that he gave me was that during the family proceedings his lawyers failed to explain the medical evidence in a way that he was able to understand. He described to me that it was not until he was visited in prison after the fact-finding hearing and his representative drew a diagram to enable him to understand why 'accident' was not an explanation that he finally understood. He told me that he had accepted that as an explanation from the mother and the children because by the time he arrived on the scene that is what they were all saying.
- 45 At the end of his evidence, whilst I can understand why he might have maintained denial in relation to the manner in which these injuries were caused, I am not at all convinced that his insistence that accident was the explanation was because he was told that by the mother, Sarah and Patrick. I consider it more likely that the uncompromising opinion of his own defence expert persuaded him that this argument was beyond sensible argument. The real issue is whether he knew that the 'accident' story was untrue from the outset and if so, why.
- 46 I can summarise Sarah's father's evidence as follows. We know that Sarah's father had recently been bereaved and he was distracted by that unexpected death (his mother) and watching her funeral long distance on his phone. He was, I am sure devastated and upset. Sarah's father explained that he was in the garden. He describes himself as being right at the bottom of two flights of external steps sitting

- under a tree at the foot of the garden. In his ABE at one point, Patrick suggests that he was actually sitting at the bottom of the first flight of stairs on a half landing where photographs taken by the police show a chair. Whichever it is may not matter because he is clear that he was busy watching videos of his mother's funeral.
- 47 Sarah was playing. He had given her a biscuit and there came a point where she said that she wanted to return to her mother inside the flat. He told me that suddenly he heard a bang and went straight into the flat. He told the police that '*something fell and I heard her shout*'. He was challenged about how long it was between her leaving him and hearing her screams. It was pointed out that he told the police it was 'not even a minute' 'within a minute'. He confirmed that it was very quick. He was unable to explain how it was possible for her to be cut within that time? He could not explain what the 'bang' was that he repeated in his oral evidence. That makes sense when a fall is relied upon but not when it is not.
- 48 Sarah's father was insistent that on entry to the kitchen he was presented with a unified account from the mother and the children. All three said – she was going to get a biscuit and she fell. There were biscuits all over the floor and '*blood- it was dripping from under there – some going into her boots*'. She was wearing wellington boots. He was challenged about how this was possible? When did they have the time to construct this alternative explanation? How could it have been impressed upon the children so that he would be so fooled? He had no answer for this.
- 49 Sarah's father maintained that once he had seen his daughter bleeding so heavily, he sat in the living room and wept whilst the mother tended to her, cleaned her up and examined the injury. He did not look, he told me, because he was '*not brought up that way*'. However, the photo suggests that he was there taking it and therefore supports Patrick's account that he was in the bedroom in the aftermath of the injury examining Sarah with the mother. He denied that he was there.
- 50 Whether Sarah's father was in that bedroom when that photo was taken is important because if the cutting was done in the bedroom there must have been blood. If Sarah's father was in that bedroom then he would have seen that blood and this would have undermined the account that he had been given by the mother and children as to accident. In his evidence, Sarah's father persisted in his explanation that there was a lot of blood but in the kitchen and that he had cleaned it up on his return to the flat but he saw no blood in the bedroom which might have alerted him to the truth. He was challenged about this. Quite apart from the evidence of Patrick and the photo it was suggested to him that there was a second opportunity for him to go into the bedroom after he and Patrick returned from the hospital. This was where Patrick slept that night. Still he maintained that he saw no blood there. Much was made of his efforts to clean up the blood in the kitchen on his return to the house that night but he said to me he didn't go to the bedroom and didn't see any blood in bedroom. It was put to him that he was seeking to distance himself from being anywhere near that bedroom because that would undermine his position of complete 'ignorance' as to what had happened. He denied this.
- 51 Just as the cab arrived to take the family to hospital, Sarah's father took photos of the kitchen. He said that he did so in order to demonstrate where Sarah had fallen and

that the mother had asked him to do it. There is no blood on those photos. The forensic evidence presented at the last fact finding was that no evidence of extensive blood staining was found but nor was there any evidence of cleaning up. Indeed, the forensic scientist remarks that the surfaces appeared quite grimy and dirty. Sarah's father was asked why he did not take photos of the blood for the hospital. He could not explain why. Nor could he explain why, if this was an accident, his first thought or the mother's first thought was to take pictures of the scene, something that they had not done days before when Sarah had apparently fallen and bumped her head. Let me just turn to that piece of evidence for a moment.

- 52 The day before this injury Sarah had fallen and apparently bumped her head on the TV stand. She had been running around in the house and she had fallen and her head struck the TV stand causing it to bleed. She was bleeding a lot because the mother called an ambulance but as one did not arrive she later cancelled it satisfying herself that the child was ok. This account was given to the police in interview by both the mother and Sarah's father and it was also given to me at the last fact-finding hearing. By that stage the amount of blood that Sarah lost on that day had a potential bearing upon the accuracy of the evidence about blood loss when her genitals were cut.
- 53 During the police investigation the police interrogated the parents' phones and suggested that the location of the parents throughout the weekend was in part verified by reference to the log in data on those phones. So, for instance when in the family home, their phones would be connected to the WiFi there. On disclosure of this information there was evidence to suggest that at the time that this head injury happened, Sarah's father was not even in the flat. In the criminal trial he said that he now realised that he was not there.
- 54 His explanation for this mistake was that he was confused by the death of his mother. I am quite satisfied that this is no explanation. This was not a simple acceptance that he was there, it is a detailed account volunteered by him to the police in interview and verified further in evidence before me. In the interview he gives great detail of how she was running – he told her to stop – she slipped – blood started flowing. He described to the police how it was the left side of her head. He told them that he held a towel to her head to stem the flow of the blood. There is extensive detail which is simply not explained by grief induced confusion. Either this was true and he was there and lying about it now or it is not true and he was prepared to construct an elaborate story to demonstrate that this was an accident.

#### Mother's evidence

- 55 Whilst the mother's position has remained the same it is fair to comment that there was additional evidence about her conversations and texts not available previously. They are relied upon by Sarah's father as clearly pointing the finger at mother as sole perpetrator.
- 56 There are texts in which the mother discusses with a friend, 'O', that perhaps Sarah was in need of 'cleansing'. Mother told me that was because she had started screaming at night and saying she was seeing people. Mother agreed that she told O and sent a picture to him and he said that maybe she needs 'cleansing'. There were

messages from her phone at the time of the injury saying that Sarah had injured her vagina, referring to an accident, and asking that the Pastor should be informed. These messages were not, it seems shared with Sarah's father who was oblivious to her association with this man, O.

- 57 However, when asked in cross examination if she alone cut Sarah, she said *'how could I cut a child in one minute and hold her myself'* demonstrating that she fully understood the points made to Sarah's father during his evidence. She maintained that no one else was there and that there was *'no witch in my house'*. She went on, however, *'I don't think [Sarah's father] did it – even though he is saying was me. I support Sarah's father to have the children...he is not a bad person – yes if he is acquitted he can have the children – I never called him a liar. I just said I didn't know about his family.'*

### **Position of the parties**

- 58 It is the local authority case, supported by the Guardian, that nothing has changed here. The fresh evidence from Patrick when examined against the other evidence, adds nothing.
- 59 Father says that I can and should set aside the finding so far as it relates to him because of Patrick's evidence which confirms he was not in the flat. Added to that is evidence to suggest she wants to cleanse her child and these text messages and the phone messages rule him out.

### **Discussion and analysis**

- 60 Standing back and looking at the whole picture I am quite satisfied that nothing has been put before me in evidence since my last fact finding to cause me to alter the findings that I have already made.
- 61 There is no doubt in my mind that Patrick is being honest when he relates that he did not give a proper factual account prior to the last fact finding. Indeed, that admission is entirely in keeping with the findings that I made that he was not giving a true account and that the fall on the cupboard was untrue. However, whilst I equally have no doubt that he is telling the truth as he sees it I find myself cautious as to whether he has completed his disclosure as yet and I am concerned by his obvious anger directed towards his mother and his express intention to 'prove' her responsible.
- 62 As I have set out above, he did not see the cutting but he knows that the fall did not happen. He did not see her do it. He repeats no account by Sarah that the mother alone did it. He recounts no admission from the mother that she was responsible. All he knows is that his sister has been cut and when he first sees her, she is emerging from their mother's bedroom followed by their mother. I am quite satisfied that he has assumed that the cutting was carried out by his mother.
- 63 It is right that he places Sarah's father outside at that point in time and describes him coming in on hearing Sarah's screams but I cannot examine that evidence in isolation from other parts of the evidence. In particular, the unchallenged evidence of the experts that this was a two-person job and the even greater lack of credibility in Sarah's father's account of events the second time around.

- 64 I do not need to repeat the powerful evidence of the experts given on the last occasion. In one sense it hardly needs repeating. It is a matter of common sense that to make the precise cuts seen here, the child would have to have been held down or anaesthetised. There is no evidence before me that she had been anaesthetised. She must have been held down. That would involve another person. There was no suggestion from either Patrick or Sarah's father that there was another person in the flat. If there had been another person it is difficult to know how that would not have been noticed by Patrick or by Sarah's father. Fundamentally, Patrick's account does not assist me in understanding how the mother could have perpetrated this alone.
- 65 Turning to the evidence of Sarah's father, I am quite satisfied that I am not being given a full account. His account makes no sense, and on so many levels. That Sarah should be acting perfectly normally then minutes later bleeding profusely – bleeding like he had never seen a child bleed before (is what he said on the last occasion). There was simply insufficient time to perform the delicate and precise procedure on this child.
- 66 Looked at another way, if this was a frolic of the mother's and Sarah's father neither joined in nor even knew that it had happened, this mother must have either spontaneously decided to cut her daughter when she entered the bedroom to visit her or having planned the assault was fortunate that she should leave the side of her father for the minute it took to carry out the deed. This beggars belief. It also beggars belief that someone intent upon perpetrating such an injury would do so when their 'innocent and ignorant' partner is within earshot.
- 67 To that evidence I add the clear evidence of Sarah's father seeking to distance himself from these events. For example, his initial insistence that he did not stay over at the property, suggesting it was only ever once a month when interviewed on 30<sup>th</sup> Aug, to be replaced, on receipt of the phone evidence, by an acceptance that he did stay over that entire weekend. His evidence that he did not at any point go into the bedroom of that property that day which I consider to be untrue and a blatant attempt to distance himself from any blood evidence that might undermine his story that he believed the accident account true. Indeed, I find it difficult to understand why Sarah's father would photograph the cupboard in the kitchen but not the pools of blood that were later cleaned up by him. Unless the child did not bleed so heavily in the kitchen because she bled elsewhere which is more likely in my view.
- 68 Finally, we have the blatant lie about the events of the day before and the bump to the head. Whether he is lying now or he was on the last occasion does not much matter. Either the lie demonstrates the willingness of this father to create a fantasy in order to support the mother about an injury he did not witness (as he did when he joined with her in his false account of a straddle injury) or it demonstrates his willingness to lie now for reasons that are unclear save perhaps to distance himself from events in that home.
- 69 It goes without saying that in considering these lies I have cautioned myself, as I must, that these lies cannot themselves prove his involvement in the assault on this child. They can, however, provide supporting evidence for an already strong

circumstantial case so long as I am satisfied that there is no innocent explanation for them. In my assessment there is no innocent explanation.

70 So all things considered I have is additional evidence from Patrick which confirms my finding that he was not telling us what he knew previously but goes nowhere to satisfying me who, out of those present, actually perpetrated this injury. That is not to detract from the importance of Patrick's fresh account. He has shown enormous bravery in coming forward and I congratulate him for trying to help me discover the full picture. However, we do not yet have that full picture in my view.

71 I am not satisfied that this mother was the sole perpetrator of these injuries. Nor am I satisfied that I know exactly what happened in that flat. Indeed, I am clear that I do not. I do not know who actually cut Sarah but I do know that it would have needed two people and for the reasons set out above I am satisfied that this father continues to be untruthful about what he knows. Taken together that leaves me quite satisfied that the findings I made on the last occasion stand as firm as they did in July 2018 – indeed perhaps firmer.