

Neutral Citation Number: [2014] EWHC 287 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

IN THE MATTER OF E J G-S (Born 06.02.04) (A Child)

AND IN THE MATTER OF THE SENIOR COURTS ACT 1981

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/02/2014

Before:

THE HONOURABLE MRS JUSTICE RUSSELL DBE

Between:

JEG

Applicant

- And -

IS

Respondent

-And-

E J G-S

2nd Respondent

(By her Children's Guardian)

Christopher Hames (Instructed by **Dawson Cornwell**) for the **Applicant**

David Marusza (Instructed by **Brethertons**) for the **Respondent**

Mark Jarman (Instructed by Cafcass Legal) for the **2nd Respondent**

Hearing dates: 7th February 2014

JUDGMENT

The Hon. Mrs Justice Russell:

Introduction

1. This case concerns a young girl, E, who has just turned 10, as she was born on the 6th February 2004 and I heard this case on the 7th February 2014. E's mother is IS, a British citizen, who is an ethnic Russian originally from Kazakhstan. Her father is EG a British national. Her parents met in 2000, their relationship lasted until August 2005 when EG left the family home. E has not seen her father since July 2009 when her mother took her to Russia; ostensibly for a holiday visit she has now told me while giving evidence that she removed E from the jurisdiction having already formed the intention to remain in Russia and to deny E contact with her father.
2. It is the case of IS that E has been sexually abused by her father at some time during the period between 2005 and 2008 when she was having contact. These allegations which her mother and maternal grandmother say were disclosed to them by E were investigated by the Metropolitan Police and by Westminster Social Services in early 2009 and both investigations concluded that there was no basis for taking the matter further. E had two ABE interviews, one on the 16th January 2009 and one on the 10th March 2009. In neither interview did E make any disclosures of sexual abuse. Following the 2nd interview and an order of the court for a section 7 report (ordered by District Judge Bowman on the 20th February 2009) Westminster Social Services filed a letter with the court which said, among other things, that they did not believe that the information provided by E on its own supported an allegation of sexual abuse, the questioning and taping by her mother of E raised questions regarding the reliability of this information, and that IS had stated the intention of obtaining a child psychologist [report] solely to further investigate the allegations which they would not support as they believed further investigation was not necessary. They concluded that they did not believe that EG posed a risk to his daughter.
3. Prior to the allegations of sexual abuse, around the 23rd August 2008, it was alleged that E had complained of her treatment at the hands of her father's then girlfriend CC. Specifically E complained that CC shouted at her and that she had hurt E when she had washed her. E complained of soreness in her genital area. This was investigated by Westminster and in their Core Assessment report they concluded that there were no concerns as to physical/sexual abuse by CC but that it was likely that E became sore around her bottom when being washed by CC.
4. Following E's retention in Russia, on the 25th August 2009, EG issued an Originating Summons in wardship and orders were made to locate E. Meanwhile IS claimed refugee status in Russia and E started school there. Nearly two years later, in June 2011, having found out that E and her mother were in Moscow, her father issued an application for contact: at the same time IS sought to have him deprived of his parental rights. There followed proceedings in the Butyrsky District Court in Moscow granting EG monthly contact. IS appealed against that order and her appeal was dismissed.
5. During the currency of the Russian proceedings IS claimed that E had made further disclosures to her about sexual abuse by neighbours of her father's which took place in a garage and in his flat. IS took E to be interviewed by an educational psychologist,

Ana Anatolyevna, and she produced a transcript of this interview which was put before the court in Moscow. This report and that of the centre in which Ms Anatolyevna was based was the subject of criticism by the District Court both as to methodology and as to the competence and qualification of the authors of the report to reach the conclusions they did; a finding that was not over-turned on appeal.

6. Contact was ordered in Russia. IS was subsequently found not to have complied with the order and to have evaded the court bailiffs. She removed E from school and did not take her to the Uchastie Centre where contact was ordered to take place. The contact order was varied on 24th April 2013. IS removed E from school and home-tutored her. Eventually on the 4th December IS returned to England with E.
7. Notwithstanding that none of the evidence filed in the previous proceedings (set out below) had been found by those investigating the allegations to support a basis of sexual abuse, IS seeks findings in this court. She also seeks a finding that CC physically abused E. EG seeks a finding that IS fabricated the allegations to undermine contact and has caused E “serious emotional harm.”

Law

8. These are civil proceedings, the burden of proof is on the party making the allegations. The standard of proof is the balance of probabilities – “neither more nor less” – to quote Baroness Hale in *Re B (Care proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141. I may make a judicial inference upon facts that are themselves established and the balance of probability, and here I make reference to *A local authority v A (No.1)* [2010] EWHC 28 (Fam) also reported [2011] 2 FLR at 137, and I will do so in the course of this judgment. Once a decision is reached on the facts it will form the basis of any decision as to what orders should be made in respect of E. All decisions regarding E will be based on the paramountcy principle; that is to say her welfare is paramount.
9. The allegations made by IS are of a very serious nature but that does not alter the standard of proof. As Baroness Hale said in *Re B* there is no logical connection between seriousness and probability. I keep that in mind as I do the need to consider all the evidence with care taking into account the totality of the evidence before the court including the background to the allegations, their genesis and the conduct of the parties. I shall set out some of the evidence in the narrative in this judgement, which should be read as a whole, forming as it does the path I followed through the history of the case to reach my conclusions.

Evidence

10. I have heard limited evidence in this case as agreed by the parties and have only heard the oral evidence of IS, LN and EG, the mother, the maternal grandmother and the father of E. I heard this evidence, again by agreement, over one day on the 7th February 2014. I have read the statements of the parties contained in the wardship bundle and in the bundle prepared for the hearing on 18th March 2009. I have read the documents, reports, letters and transcripts contained in both bundles, and the translations of the decisions of the Russian courts which were reached when IS retained E in Russia between July 2009 and December 2013. I have read the reports prepared for those hearings and a transcript of interviews E had with a educational

psychologist on the 14th July and 25th of August 2011. I have not heard from the psychologist, Ms Solovyeva, upon whose evidence IS relies.

Allegations

11. IS makes the following allegations which were set out in a schedule prepared for the final hearing. There are 12 allegations in total.
 - i) *The first dates from 23rd August 2008. It is alleged that E was sensitive in her genital area and said that CC had hurt her there when she had washed her. The evidence for this is based on what E said to her mother; to the social worker who prepared the core assessment and to a teacher at school. Other than IS the court has not heard evidence from any other person to whom this was reported and has not heard from CC.*
 - ii) *The second allegation is that E disclosed she played “bed games” with her father. She is said to have told her grandmother, who then reported it to her mother. I have heard from LN the maternal grandmother who said that E placed her hands on her grandmother’s chest, abdomen and genitals when she got in bed with her in the morning saying they should play a clock game.*
 - iii) *The third is that EG played a sexualized game with E in the bathroom called “Matchy Scratchy” whereby the father would light matches and drop them in the bath while she scratched his genitals. It is said by IS that E told her about this in February 2009. There is reference to this in the letter from Westminster dated 13th March 2009; E is reported as saying she played this game one time, her father lit a match in the bathroom and she tickled his bottom. She pulled his trousers down and she saw his bottom; they giggled and he left. IS questioned E about this and taped the conversations which she transcribed. She did not produce those transcriptions in evidence.*
 - iv) *The fourth: E told her mother that he “has big ears, he can hear me” and told her mother she was referring to her father, she told her mother if he heard he would put her in a big rubbish bin and take her away. There is no evidence in addition to that of IS.*
 - v) *The fifth: E told her mother that she would scratch her father’s bottom whereupon he would run to the toilet as he needs a “wee”. There is no evidence in addition to that of IS.*
 - vi) *E told her mother that EG gets into the bath with her sometimes with his pants on and sometimes not. There is no evidence in addition to that of IS, and on any view this could not on its own constitute an allegation of sexual abuse.*
 - vii) *The seventh allegation has two parts a) E told her maternal grandmother and then her mother on 12th January 2009 that EG licked her bottom and said “Yuck”; and b) that E told her mother and grandmother that EG put his tongue in her bottom and vagina. E is said to have made these allegations to her grandmother and then to her mother. She did not make them during two ABE interviews or to the social worker.*

- viii) *E told her mother that she played a game called pants in which one person counts and another changes their pants.* The evidence of IS in her undated statement for the 18th March 2009 hearing is that this is a game of a sexualised nature. There is no supporting evidence for this claim. At the time IS was pressing for an expert report.
- ix) The final four allegations arise out of allegations which IS now says were made to her by E on holiday at a Black Sea resort in 2010. IS contacted the police in Britain by email in which she set out the details of what she alleges E told her. Some of the allegations were repeated by E to the psychologist at the OZON centre in 2011. *That EG and other men took photos of E naked in the family garage.*
- x) *The tenth: the EG beat E with a wooden stick on the bottom.* Again to the psychologist at the OZON Centre. At the time this was alleged to have taken place (2009) E, when questioned by the social workers, said that her daddy never hurt her.
- xi) *The eleventh: That EG touched E on her bottom and genitals.* Allegation made to the psychologist at the OZON Centre.
- xii) *The twelfth; that EG played sexualised games and/or behaved in a sexualised manner prior to 2009.* EG argues in response that contemporaneous material contained in the reports of the local authority would belie this overarching allegation.

Background

- 12. The parties met in 2000 and formed a relationship during which E was born in February 2004, shortly after which they moved to a flat at 2 Swan Court, London E1. By August of that year, however, EG moved out of the flat because the relationship with the Respondent had failed. He maintained as much contact as possible with E, picking her up 2 or 3 times a week from nursery and returning her home by 7pm and having her for a full day during the weekends.
- 13. Agreement over contact soon foundered and by the 10th September 2005 IS presented EG with a letter telling him that from that point onwards he could only see E once on a weekday for 2 hours and every Sunday for 3 and a half hours between 10am and 1.30pm. This reduction in contact was unacceptable to EG and is illustrative of the restriction that IS sought to impose on E's contact with her father from the outset.
- 14. On the 16th September EG's solicitors wrote to IS's solicitors making proposals for contact, including an offer of mediation; he followed this up by directly offering to IS to go for mediation with her, on the 22nd of September. On the 28th September he was allowed to have contact with E at her mother's flat. There followed two occasions in October when contact was cancelled by IS. On the 12th October 2005, when E was just 20 months old, EG issued an application for contact and shared residence. There have been court proceeding in progress throughout her life.
- 15. There have been three sets of proceedings concerning E's contact with her father; those in the PRFD between October 2005 and 18th March 2009; the wardship

proceedings which are before me now issued in August 2009 when EG became concerned that E would not be returned from Russia. During the wardship proceedings there were proceedings in Moscow which started in June 2011 and continued until April 2013. The wardship proceedings were restored by IS's solicitors in November 2013 shortly before IS and E returned to the jurisdiction on the 4th December.

Proceedings in the PRFD

16. I set out these proceedings in some detail as it was then that the allegations of sexual abuse first arose. The context in which they came about is of relevance as are the investigations by the police and local authority that took place at the time.
17. These proceedings started when EG issued an application for contact and shared residence order on the 12th October 2005. On the 18th October EG spoke to the nursery and was told that from 4th November 2005 E's mother had given notice and she would not be taking E to the nursery anymore.
18. On the 31st October 2005 the case came before Deputy District Judge Scaratt (as he then was) on a conciliation appointment and it was agreed that contact would take place on Sundays from 10am to 12 noon starting on 6th November 2005. E was to be collected and returned to her home address. The conciliation appointment was adjourned to 21st November 2005 to enable the Respondent to consult her solicitors (whom she had already contacted) and the application for interim contact to be listed on 1st December 2005. The Applicant gave an undertaking not to remove the child from the jurisdiction without leave of the court, to return the child to Dreamaker Day Nursery and not to remove her from the nursery until the end of November 2005 or until a new nursery could be agreed between the parties. IS instructed Pollecoff Solicitors.
19. On the 6th November EG arrived for contact at 10 am; E was not ready to leave the flat and IS informed him that she was too ill to go out of the flat and that she had a doctor's letter saying that she should be kept in. EG insisted on seeing the letter which confirmed that she could be taken out and eventually he managed to persuade IS to allow him to take E out of the flat. He says that the maternal grandmother, LN, followed EG and E and contact was ruined by her hysterical behaviour. IS claimed that her mother just happened to be passing by.
20. There followed two occasions when contact took place; on the 13th and the 20th of November. On the 21st there was a conciliation appointment before Deputy District Judge Marco at which there was no agreement about contact and the existing contact order was discharged. Confirmation was received from IS through her solicitors Pollecoff that she was prepared for contact to take place on 27th November at her flat from 10am until 12 noon and that she was willing to vacate the flat to allow it. However this was short lived as on the 24th November IS changed solicitors (to Jennings Son and Ash) who informed EG that she would not agree to any unsupervised contact and that contact would not take place on the 27th.

21. On the 1st December Deputy District Judge Nichole adjourned the application for interim contact to 16th January 2006 and directed a CAFCASS report on the issue of residence and contact, a final hearing was listed on 9th June 2006. There was an agreement for unsupervised contact agreed for Saturday 3rd December 2005 to take place for 2 hours from 10am to 12 noon, for the next three Saturdays contact to take place for 3 hours from 10am to 1pm and thereafter for 4 hours from 10am to 2pm. Contact took place on all four occasions.
22. On the 19th December a letter from IS's solicitors informed EG that IS did not intend to apply to change E's nursery but that she would only go there 3 times a week. E was taken to hospital and admitted for 24 hours on 28th December but her father was not informed until contact took place in IS's home on the 31st December. Contact took place again on the 7th January 2006.
23. On the 16th January His Honour Judge Ryland made an order providing for contact to the father and listing the matter for 30th March 2006. There followed a period when EG had contact every Thursday from nursery at 5.30pm and returning her home by approximately 6pm. There was also to be contact on Saturdays from 10 am increasing by an hour each week so that as from 18th February 2006 it was from 10am to 6pm. Contact took place on every occasion except on the 18th of February when E was not well. On the 21st February IS again changed her solicitors this time to McMillen Hamilton McCarthy.
24. On the 27th March 2006 the CAFCASS report was filed. The report did not support the application for shared residence saying the communication between the parties was not at a sufficiently good level. During the preparation of the report the Cafcass officer observed a very high level of anger on the part of IS over the break up of the parties' relationship and a sense of betrayal and distrust on her part. It is likely that this coloured her view of him to the extent that she would not allow E to build a proper relationship with her father. E was described as an emotionally secure well cared for child comfortable with both her parents.
25. On the 30th March the case was listed before Her Honour Judge Pearlman who ordered contact in line with the recommendations of the report. Directions were given for a hearing for shared residence and contact to be listed on 22nd September 2006. A second Cafcass report was ordered. Contact took place in accordance with the court order; for weeks 1, 2 and 3 EG had staying contact from Friday at 3.30pm to Saturday at 6pm and on week 4 visiting contact on a Saturday from 10am to 6pm. He also collected E from nursery at 5.30pm every Tuesday and returned her home. On the 7th September 2006 the 2nd Cafcass report was filed.
26. On the 22nd September the case came before Pearlman HHJ again. There was an order made which included recitals regarding the need for IS to keep EG informed of matters concerning E's schooling and health; the presence of the maternal grandmother at handovers and the presence of the father's then partner GA during contact. The latter two recitals reflected issues which caused difficulties in contact as each party complained about the presence of third parties. The order reflected a contact regime that continued contact on the previous four-weekly cycle, provided for Christmas, Easter and birthday contact and anticipated a regime for when E attended school full time. In July of 2007 there was an order allowing IS to take E on holiday to Bulgaria.

27. There were no further proceedings for a year, then in August 2008, IS told EG she was suspending contact, alleging that CC (the father's then partner) had hurt E. On the 10th September IS informed EG that E's GP had referred the case to Westminster Social Services. The core assessment, which provides the primary assessment in the case started on the 24th September, was completed on 28th November and authorised on the 2nd January 2009.
28. In essence it concluded that there had been a long history of poor communication between E's parents and that E showed clear distress when asked about her father's partner CC. It concluded that there was no evidence of significant harm but that the on/off contact arrangements and negative interaction between the adults in her life would have an impact on E's emotional and behavioural development if not appropriately addressed. They recommended mediation for the parents and that the family should be referred for family therapy.
29. Meanwhile, on the 16th December 2008, EG applied for the immediate restoration of the contact provided for in the order of HHJ Pearlman on 22nd September 2006; for a penal notice to be attached and an Order that IS pay the Applicant's costs of the application. District Judge Roberts ordered that the order of 22nd September 2006 remain in force and in particular the paragraphs relating to Boxing Day and holiday contact, and EG's application was listed for a hearing on 26th January 2009. E had overnight staying contact with her father from the 26th to the 31st of December.
30. On the 7th January 2009 EG applied for an attachment of a warning notice to the contact order. On the 16th of January IS's solicitors informed EG's solicitors by telephone call that all contact was suspended following allegations of sexual abuse.
31. On the same day E was ABE interviewed by Detective Constable Eileen Griffin. The interview lasted 35 minutes and was conducted in the presence of a social worker from Westminster, Veronica Cools. E made no disclosure about any form of sexual abuse or inappropriate behaviour on the part of her father.
32. E was reminded that she had said to her granny (presumably referring to LN) "that your daddy touches you and that he licked you somewhere. Do you remember saying that to your granny?" According to the transcript she did not say anything audible in response; when asked when she told granny E replied yesterday. E then said she didn't remember; she didn't know why she said it; she did not remember it happening (though what she thought "it" was can only be speculation.) When asked "do you remember it happening?" E said no. She was asked again; "Do you remember, E?" and again she replied no.
33. She was then asked "So was that, was that, was that true what you said to your granny true?" E said "Yeah". Asked where did it happen she said she didn't remember. The DC said to E that she had pointed to her back. E again said twice that she did not remember and that she always didn't remember things. E was asked if when she pointed to her back area on her bum if it made her feel uncomfortable, to which she (unsurprisingly) said yes. She and the DC then discussed how E's teacher had told her that her bum is like a cushion. E said she could not remember several times and that she could not remember what he did or remember who he was. This exchange is relied on by IS as proof of sexual abuse; but no statement or disclosure of any sexual abuse or sexual behaviour by her father was made by the child.

34. On the 26th January the case came before DJ Reid who made orders for the preparation and filing of evidence including an update from Westminster, and for notes of the ABE interview to be filed. The case was set down for further consideration including the reinstatement of E's contact with her father, on submissions only on the 11th February 2009. The transcript of the ABE interview was received on the 9th February.
35. On the 11th February DJ Bowman made orders reinstating E's contact. The parties agreed to a referral to the Marlborough Family Unit and that E's school should be asked to monitor E's emotional and behavioural development. The case was set down for a review of contact on the 11th August 2009.
36. IS cancelled the contact on 19th February the day before it was due to re-start. On the 20th she applied for contact to be suspended and applied for a s7 report and the instruction of a child psychiatrist or psychologist. On the 26th EG applied for enforcement of the contact order. On the 10th of March there was a further ABE interview of E during which she, again, made no disclosures.
37. By a letter dated the 13th March 2009 Westminster Child and Community Services which set out the details of a meeting with DC Griffin at which Ms Cools was present on the 10th March; confirming that the department had received and considered transcripts of two conversations IS had with E. They confirmed that they did not believe that information provided by E on its own supported allegations of sexual abuse and that IS' actions in questioning and taping the child raised doubts about the reliability of the information. They had taken the allegations seriously, as had the police, and believed that the matter was fully investigated. They confirmed that E had said she enjoys having contact with her father and that they supported his application for contact.
38. Westminster appended an Incident Report Sheet from E's school. Dated 30th January 2009; E was found sitting on her own with her head down, when asked why she was sitting on her own she said she was sad. When asked why E said it was because "I can't see my daddy 5 and 4 weeks, I don't know why." She had asked her mummy but she said no. "I miss my daddy but I don't miss C cos she hurts my bum with soap."
39. On the 18th March 2009, following a brief hearing before His Honour Judge Karsten QC at which he heard from counsel and heard no evidence contact was ordered to take place on alternate weekends from Friday to Monday and half the school holidays. The judge also made an order that in the event of non-compliance by IS the case should return before him on the 25th March and that in the event of any subsequent non-compliance the matter should be set down before him on 48 hours notice to IS's solicitors. The case was listed for review on 11th August 2009. That hearing was vacated on 10th August after IS had gone to Russia with EG's agreement and confirmed by text that she would be back on the 6th of August. There were no further orders or court hearings in the PRFD.
40. Contact took place as ordered without any difficulties arising between March and July 2009.

Proceedings in Russia

41. When in Russia IS claimed refugee status. For sometime despite hiring private investigators in the UK EG was unaware of the location of his daughter and her mother. He was granted orders in warship including a location order in August 2009 (see below). Following the arrest of the maternal grandmother (2nd Defendant to the wardship proceedings) at Heathrow Airport on 10th April 2011 pursuant to the order of Mr Justice Moylan, her subsequent imprisonment by order of Mr Justice Wood, on the 11th April, and following her release by order of Mr Justice Holman on the 14th April 2011 information came to light as to the whereabouts in Moscow of E and her mother.
42. At the end of June 2011 EG started proceedings in the Russian courts, applying for a contact order and IS counter-claimed to deprive him of his parental rights. The court ordered that E should be interviewed by a psychologist at the Uchastie Centre for Diagnosis and Counselling. In July and August 2011 E was interviewed at the OZON centre. This was not ordered by the court in Russia; it is a matter of dispute how the referral came to be made as IS says it was made by her local authority and EG says it was made by the mother. The document from the OZON centre dated 29th August 2011 sets out at the outset of the 2nd paragraph that IS contacted the Centre in respect of her daughter E. The interview with E is appended to that document. The local authority decision of the Council of Inter-city Municipal Establishment "Presnenskoye" in the City of Moscow is translated as stating in paragraph 6 that the Butyrsky District Court contacted the authority responsible for guardianship of minors and that E was then referred to OZON. It is not possible to say exactly how the referral came about, it was undoubtedly supported by IS. The Russian court rejected its findings and was highly critical of it. I do not intend to go behind their decision and find myself in agreement with many of their criticisms; their report as translated and exhibited is absent of any explanation for the methodology involved and lacks any analysis of the interview or interviews undertaken with E.
43. I have no idea when and for how long E was interviewed on the occasion transcribed, and which is relied on by her mother as proof of sexual abuse. I have not seen any evidence regarding the context of the interview; what happened before it and what occurred afterwards. IS said in evidence that E was seen on several occasions. I not seen have seen any note or transcript of any other interaction with E at OZON. The absence of any record of what took place during the period E visited the centre and was assessed there undermines their conclusions.
44. I note, as the Russian court did, that Ms Solovyeva is an educational psychologist and I too question her qualifications to carry out such an interview which purports to reach conclusions over and above E's educational development and intellectual capacity within that sphere; psycho traumatic events and their effects that are the province of a psychiatrist. There are serious shortfalls in the report which accepts all that is said by the child and her mother (and there is no record of what was said by IS) at face value without analysis or challenge which undermines the conclusions reached. Over and above those shortcomings is the fact that the OZON Centre did not engage with or interview EG which can only have increased the lack of balance and analysis in their report.
45. The interview of E must be set against the antipathy of her mother towards her father and her marked reluctance to promote contact ever since she and EG parted. A reluctance which is clear from the history of contact going back to before E's second

birthday. The interview with Ms Solovyeva took place after E had been separated from her father, geographically and physically having had no contact for two years. She had become immersed in a very different culture and language and had spent most of the time with her mother. The allegations disclosed by IS to the police in her emails were not repeated in any detail by E. E did not, for example, say she had been blindfolded or tied up when pictures were taken of her; she did not say there were objects used on her, or that she was hurt so much they had to stop. E did not say other children were hurt in her presence or that red paint that looked like blood was used to frighten her. All these are allegations made by IS alone. This pattern repeats that when E was interviewed twice by the police in London in the presence of the social worker; the disclosure of sexual abuse of a much more serious nature which she is alleged to have made to her mother, and grandmother, are not repeated by E herself when she is interviewed.

46. After the hearing the OZON Centre was investigated by the authorities and found to be deficient in its psychological reports. Specifically it was held the reports may lead to serious errors and the handing down of wrong decisions affecting the rights and legitimate interests of children. It was fined 170, 000 roubles.
47. The Butyrsky District court decided that E should have contact with her father and ordered monthly contact to take place at the Uchastie Centre for Diagnosis and Counselling, supported by a specialist and in the absence of the mother; the specialist was there to help E overcome the artificially formed negative view of her father. The court found that comparing E's attitude towards her father before she left England and her attitude after a forced two year separation that IS had intentionally formed a negative image of the father in their daughter.
48. IS appealed this decision of 23rd March 2012. The appeal was heard on 6th July 2012. The Appeal court fully agreed with the decisions of the District Court and dismissed the Appeal.
49. Once again no contact took place, frustrated by IS, who, as the Butyrsky District Court later found, changed her place of residence and hid from the bailiffs and EG. She did not take E to the Uchastie Centre or to school. IS did not attend court for the hearing to amend the contact order. The court found (and this is not disputed) that IS was evading the bailiffs and had concealed her address and place of residence. By an order of the 14th May 2013 the contact order was amended to allow contact to take place at school. IS removed E from school and began to teach her at home. IS says this was because men were seeking her and E out at school.

Wardship proceedings

50. The Originating Summons in wardship were issued by an order of Mr Justice Moylan of 25th August 2011 E was made a Ward of Court and location order was granted. On the 10th April the Second Defendant (LN) was arrested at Heathrow Airport further to the location order and on the 11th April she was remanded in custody by order of Mr Justice Roderic Wood; the application to commit the 2nd Defendant was adjourned to 14th April 2011. LN was ordered to take all reasonable steps to secure the return of the child to the jurisdiction of England and Wales. On the 14th April by order of Mr Justice Holman LN was released forthwith from custody and ordered to attend personally at the hearing on 15th April 2011.

51. On the 15th Mr Justice Holman ordered that Plaintiff EG had permission to withdraw his application for committal of LN, that LN 2nd Defendant must use her best endeavours to encourage the 1st Defendant to return E to England and Wales, forthwith upon arrival in Moscow notify her solicitors of where she is staying in Moscow and her contact details, forthwith upon ascertaining the residential address of the 1st Defendant and E in Moscow inform her solicitors of that address and return to England in advance of the hearing listed on 1st July 2011. LN filed and served two statements in June 2011.
52. On the 1st of July 2011 Mr Justice Peter Jackson ordered that the 2nd Defendant's application to be discharged from these proceedings is refused, the hearing adjourned to 5th October 2011, the 2nd Defendant must use her best endeavours to encourage the 1st Defendant to return E to the jurisdiction, not rescind, withdraw or in any way undermine the effect of the letter and request, forthwith upon ascertaining the residential address of the 1st Defendant and E in Moscow inform her solicitors of that address, return to England in advance of the hearing listed on 5th October and personally attend the hearing.
53. On the 5th October Mr Justice Holman ordered that E shall continue to be a ward of Court, the 1st Defendant mother shall return or cause the return of E forthwith to the jurisdiction and following her return shall not remove her from the jurisdiction without the permission of the Court, that if she does return E to the jurisdiction then forthwith upon the arrival of E in England and Wales, all orders of any English Court as to contact with her father are hereby stayed, if the mother does return E to the jurisdiction the matter shall be listed for a directions hearing only, on notice to both parents, within not less than 7 and not more than 21 days after her return. LN was discharged as a Defendant to the proceedings; permission given to the parents to disclose the papers in these proceedings and the Children Act proceedings to their Russian lawyers and to the Russian Courts and to any appropriately qualified person instructed by the father or mother solely or jointly to report on the father's circumstances in England.
54. Wardship proceedings were restored by mother's solicitors, and there was a hearing before Mr Justice Roderic Wood on the 21st November 2013. Directions were given for the filing of evidence and for provision of that evidence to Cafcass so that Cafcass can consider whether E should be separately represented. Solicitors for the father agreed not to provide details of the address at which the mother and E are staying to the father. A member of the Cafcass High Court Team is requested to attend the next hearing. Parties ordered to file position statements by 4 pm on 3rd December 2013 as to the issues of residence and contact.
55. On the 4th December 2013 E and her mother returned to the jurisdiction and the location order was executed.
56. On the 6th December 2013 Mr Justice Bodey ordered the matter adjourned and relisted for further consideration on 20th December 2013 with a t/e of 1 hour. E to remain a ward of Court, E joined as a party to these proceedings and Teresa Julian of the Cafcass High Court Team appointed her children's guardian, both parties to file and serve by 4 pm on 13th December witness statements setting out their proposals for the child's future and permission given for the parties to withhold their current addresses from their respective statements, the child's solicitor shall by 12 noon on 19th

December file and serve a position statement setting out: i) a brief “safe and well” report of the child following a visit to E by the Guardian; ii) the Guardian’s proposals for the reintroduction of E to the father; iii) E’s wishes and feelings. The location order including the port alert was to continue in force until varied or discharged by further order of the Court, except for allowing the mother to move with E to an address in the Greater London area provided she informs the Tipstaff, the child’s solicitors and the father’s solicitors 48 hours in advance; and other ancillary orders.

57. On the 20th December Mr Justice Baker made orders upon the parties agreeing that the father, the mother and the Guardian shall equally share the costs of the mother incurred by obtaining a transcript of a DVD of an interview of the child in Russia by a psychologist (having the transcript translated from Russian to English); having a statement from the Russian police translated from Russian into English; translating a report of the psychologist from Russian into English. It was ordered that the matter was adjourned and re-listed before Mr Justice Keehan (i) on 17th January 2014 for a pre-hearing review (time estimate half day) and (ii) on 7th February 2014 for fact finding and further directions (time estimate 1 day). The child was to remain a ward of court. IS was ordered to file and serve a Scott Schedule by 4 pm on 9th January 2014 and a witness statement in respect of those allegations and any other evidence. EG was to reply by 11 am on 16th January. Both parents were ordered to attend the hearing on 17th January 2014 in person. If any party intended to make an application at the PHR for expert evidence to be called at the fact finding hearing that party was to ensure that full compliance is made with FPR 25.
58. On the 17th January 2014 the case came before me. IS was in person. The case was adjourned to the 7th February 2014 to allow for IS to secure public funding and representation. I permitted IS to amend paragraph 4 of the Schedule of Allegations and to make enquiries at her own instigation to the Metropolitan Police and Chelsea and Westminster Health Authority in respect of further relevant documentation she wishes to seek to rely on but said that the hearing was not to be delayed should those enquiries prove unforthcoming. I determined that the fact finding hearing will be considered on the basis that the evidence placed before His Honour Judge Karsten QC at the hearing on 18th March 2009; the written evidence placed before the Court on 17th January 2014; the orders of the Russian Courts and the oral evidence of the parties. I ordered that the hearing on 7th February 2014 at 10.30 am to be before me was confirmed with a time estimate of 1 day; that E was to remain a ward of Court.

The Hearing

59. IS was represented at the hearing on the 7th February by counsel, Mr Marusza. On the morning of the trial she asked permission to file further evidence contained in a small bundle (tab H of the bundle) including the documents regarding the complaints she had made about the Core Assessment carried out by Westminster (a complaint which was not upheld either at stage 1 or stage 2); a statement of LN (who gave oral evidence); a statement of E taken by Police Captain P.B. Stepashkin in Moscow on the 21st July 2011. The latter statement has to be considered in the context of all the other evidence which includes the behaviour of IS, the investigations here and in Russia and the reported statements of E then and at other times.
60. This statement which contained some details of alleged abuse which corresponds to the allegations made by IS to the British police in 2010. It does not seem to have been

before the court in Russia; there is no explanation as to how it was obtained and in what circumstances, where it took place, who was present before, during and after the interview. Some of the allegations were not repeated when E was interviewed around the same time at the OZON Centre; such as being blindfolded and having a stick with which her father beat her and put up her bottom. In isolation and without details of how the statement was produced (E was 7 at the time) it is not possible to assess the weight that should be put on this statement. The police in Moscow did not carry out an investigation in respect of the allegations nor did they interview EG. The fact that E made this statement is a matter for concern in itself.

61. There were two summary discharge reports from the A&E department of, I am told, the Chelsea and Westminster Hospital. They are dated the 18th May 2008 and the 30th June 2007. The discharge report of the 18th May 2008 refers to a leg bruise. There is no further information, at all, about the bruise, such as which leg it was on and where, the size of the bruise, the history taken and the treatment prescribed. It is addressed to the GP, Dr Jerijan and E is named as the patient. The other, dated the 30th June 2007, refers to an abrasion on the groin; again there is no description, no location and no details as to treatment or history given. They amount to proof of nothing more than that E was taken to the hospital on those dates with a leg bruise and an abrasion to the groin.
62. I heard the oral evidence of IS, LN and EG. I shall deal with each in turn. IS gave evidence about her daughter which was at times evasive and defensive. She told me that she did not know what she would do if the court found against her but was unwilling to say she would abide by the orders of the court. An articulate and intelligent woman, much of her evidence amounted to submissions which she told me were based on her work with the NSPCC. She spoke about the late reporting of abuse being common and the fear of the abuser inhibiting disclosure. But her evidence about her daughter lacked the detail that would make it convincing. For example in her statement of the 15th January she says E disclosed about the men in the garage in or around 2010; in oral evidence she says it was at a Black Sea resort but is unable to describe how and in what circumstances the disclosure came about. IS accepted that she delayed in reporting some of the allegations to social services in 2009 but, again has no explanation why, if she truly believed that her daughter had been abused, she would delay informing the authorities.
63. IS said that she had taped her conversations with E not to replace the ABE interviews but to ensure that they (the police and others) got it right. This can only mean she wanted to make sure they followed her script. It is telling that she did not file the transcripts she made of the conversations she had with E or seek to rely upon them. She told me she had not intended to return to England but was being pursued by the court bailiff and had no choice. She told me she had no intention of obeying the Russian court's orders. It is not clear what her immigration status was when she left Russia but the ground for her refugee status must have been substantially undermined by the courts decisions in respect of E and her father. IS told me that when she had written to this court refusing to allow a safe and well check by British Embassy staff she had done so as to co-operate with the check would have undermined her claim for refugee status.
64. IS said in evidence that she had determined to disobey the contact order made in March 2009 shortly after it was made and planned to go to Russia and not return. It is

plain that in order to do so she needed the agreement of EG. IS accepted that contact went well between March and July 2009 and that relations improved between herself and EG.

65. LN's evidence was unconvincing. She seemed to be going through the motions and displayed little emotion apart from a ill concealed dislike for EG. She complained about his lack of financial support; which was not based on the reality of the situation, as apparently there was a substantial financial settlement. LN could not find one positive thing to say about him yet she did not appear convinced about the allegations. The clock game as demonstrated by her consisted of the child moving both hands against each other in a circular motion as if the hands of a clock. E was not distressed at the time she told her, or at any time she told her grandmother about games with her father. E put her hands on her grandmother's chest, stomach and abdomen. It would appear that E was doing nothing more than playing in bed first thing in the morning and LN chose to find it wrong and disgusting because it fitted with her dislike of EG. She said that her daughter did not tell her she would remain in Russia. I find this most unlikely and even if she did not LN clearly had no objection to the plan or to denying E contact with her father. LN was not a witness who inspired belief in her evidence or displayed insight into her granddaughter's current situation.
66. EG denied all the allegations and was willing to answer all the questions put to him without prevarication or pontificating. He accepted that he was very quick to introduce other women to E. He said that he and E would mess about in bed in the morning when she had contact but he had no knowledge of the clock game. However I thought he lacked sensitivity and empathy for E and was dismissive in respect of her feelings in respect of CC, in particular.
67. I did not hear from CC and she was not given an opportunity to respond to the allegations made against her in this or any other court. The evidence contained in the investigations at the time show that E complained about her and about being bathed by her in a way that E found uncomfortable and that the complaints were consistent and made to different people, spontaneously in different circumstances. E made it plain she did not like CC and did not enjoy her being there. EG denies that CC bathed E; and says that E seemed to get on well with CC.

Facts found

68. I do not make any findings in respect of CC. To do so without her being given an opportunity of responding or defending herself would be a breach of her rights under the ECHR. The evidence such as it is primarily of E's discomfort and dislike of being with CC; there could be many reasons for this (as was observed in the core assessment) including picking up on her mother's antipathy and probably that of her maternal grandmother too. I find that EG was slow to consider how his very young daughter would feel about the introduction of CC and too quick to dismiss E's unhappiness. He displayed a lack of sensitivity which he can ill afford to replicate now if he is to build a relationship with his daughter.
69. I do not find any of the allegations of sexual abuse are proved on the balance of probabilities. The attempts to influence the ABE interview with the police by taping the allegations and transcribing them "to make sure they got it right" as IS said in evidence. The lack of any convincing detail as to how the allegations came to light

either in London in 2009 or in the Black Sea resort, instead relying on generalised observations of sexual abuse victims which IS said she'd researched. Her delay in reporting allegations to the local authority do not ring true and are not indicative of a parent who believes that their child has been abused. When put together with the obstruction of contact that was there from the outset from shortly after the parties separated and the absence of allegations of sexual abuse by E being made to independent witnesses, until after the sojourn in Russia, the balance weighs against making findings that sexual abuse took place.

70. The most telling piece of evidence against there being any basis for the allegations being true is the evidence and conduct of IS herself. I find it striking that she told me that she had decided to go to Russia and remain there in defiance of the court orders shortly after they were made in March 2009. To do so she had to get the agreement of EG and avoid a return to court. IS must have deliberately set out to gain his trust by ensuring contact took place without difficulty and that she was on good terms with him. Either she did not believe that sexual abuse had ever taken place, or she cynically and deliberately placed her daughter at risk of further abuse for the 4 months prior to her move to Moscow. On balance I find it more likely than not that she did not believe her daughter to be at risk. I do not think that she would place E in danger, but rather that she knew she was safe because the allegations had no foundation and were not true.
71. Such calculated behaviour can only be as a result of deliberate planning. The plan was to sever the relationship between E and her father. The obstruction of contact, the blatant disobedience in the face of court orders here and in Russia could be seen as an attempt to safeguard a beloved child but any such view here is vitiated by the fact that IS ensured that E stayed with her father regularly between March and July 2009. She did this to manipulate a situation where she could go to Russia with his agreement in order to achieve her aim of stopping contact, not to ensure E's safety but to stop her having a relationship with her father.

Fact finding

72. The Guardian, Ms Julian, has met E twice on the 10th and 17th of December 2013. She has not filed a report but her initial impressions of E are contained in the Position Statement filed on her behalf, dated the 19th December, 2013. She found both meetings concerning as E was nervous, tearful and anxious. E said she did not want to remember about her dad. She believes she has been sexually assaulted by him; and by CC the latter resulting her being taken to hospital. There is no evidence that E was taken to hospital as a direct result of CC hurting her. The Guardian says that findings of the court will form the basis for a welfare hearing and for work that needs to be done with E for, as she says either E was sexually abused or she believes she was; both constitute significant harm.
73. Had these allegations been made in public law proceedings the court would not have delayed in hearing the evidence to determine whether there had been abuse or whether the child had been made to believe in such abuse, for as the Guardian observes, both constitute real harm. The need for judicial determination of the facts in private law cases is as necessary as it is in public law cases as the court has a duty to protect children and ensure that decisions and orders are made which are consistent with their best interests and welfare. To do so requires that the factual basis on which orders are

made is not permitted to become the subject of a continuous dispute between the parties. It is necessary that there is judicial determination of issues such as there were in this case at the earliest opportunity to avoid proceedings being drawn out and conducted by way of review. An early determination of the facts in this case, in 2009, would have formed the basis for decisions about contact and residence that may well have avoided the enforced separation of E from her father which has allowed her perception of her father to become more and more distorted.

74. An early determination of the facts followed swiftly by a welfare hearing at which the medium and long term pattern for time spent with each can be put in place is the just and proportionate way to deal with private law cases. Any monitoring of orders made as a result of the court's decisions can be provided by an agency which is better placed to provide support, such as Cafcass under section 11 H of the Children Act 1989.
75. This case will now be listed for a welfare hearing. There will be a need to apply some sensitivity in re-establishing the relationship between E and her father. The court will require the continued assistance of Cafcass Legal and the Guardian. It is essential that E remains represented to ensure she is provided with an independent voice and representation.
76. The court will provide E with a short outline of the decision it reached and the reasons for doing so.