Neutral Citation Number: [2026] EWCA Civ 85

Case No: CA-2025-002514

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING IN MANCHESTER
Recorder Grocott KC
MA24C50182

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/02/2026

Before :

LORD JUSTICE COULSON
LORD JUSTICE JEREMY BAKER
and
LORD JUSTICE COBB

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Re S (Care and Placement: Schedule of Findings of Fact)

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Gemma Taylor KC and **Alex Walker** (instructed by **Bannister Preston Solicitors LLP**) for the **Appellant (Intervenor)**
Julia Cheetham KC (who did not appear below) and **Olivia Edwards** (instructed by **Local Authority Legal Department**) for the **First Respondent (Local Authority)**
The attendance of the child's **Mother, Father** and **Children's Guardian** on this appeal had been excused by the Court, each having filed position statements setting out their case on the appeal.

Hearing date : 5 February 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Cobb :

Introduction

1. This appeal is brought, with the conditional permission of Peter Jackson LJ, against findings of fact reached at the conclusion of a final hearing in care and placement order proceedings, brought under section 31 of the Children Act 1989 ('CA 1989'), and section 21 of the Adoption and Children Act 2002. The proceedings relate to a girl ('S'), who is now nearly two years old.

2. The proceedings were heard at the Family Court in Manchester by Recorder Grocott KC ('the Judge'). Following the judgment, the Judge's factual findings were collected from the judgment, and set out in a schedule (agreed by counsel who had been instructed at the final hearing) which appeared at the end of the final order.

3. In those proceedings the Appellant was an intervenor; she is the paternal aunt ('the aunt') of the subject child. The aunt had been directly implicated in the allegations made against the parents of significant harm to S; she was the subject of adverse judicial findings.

4. This appeal has unusual features – both factually and procedurally:

   a) The unusual facts will, I suspect, be discernible from the background summary which I have set out below (see especially §10 – §16);

   b) The procedural irregularity in this appeal is identified and discussed at §21 - §25 below.

5. The Local Authority is the only effective respondent to this appeal. Neither the mother nor the father, against whom a number of adverse findings of fact were also made by the Judge, have appealed those findings, nor indeed have they chosen to play any part in this appeal. They have been excused attendance. They have both indicated, through short position statements filed on their behalf, that they support the position taken by the Local Authority on this appeal. S was represented in the court below by her Children's Guardian; the Children's Guardian also plays no part in this appeal and has indicated that she too supports the position taken by the Local Authority on this appeal.

6. For the purposes of this appeal, we have been greatly assisted by counsel, Gemma Taylor KC and Alex Walker for the Appellant, Julia Cheetham KC and Olivia Edwards for the Local Authority. We have seen a small number of the key documents filed in the proceedings at first instance, and have a transcript of the oral evidence of the aunt given at final hearing.

7. For the reasons set out below:

   a) I would dismiss the appeal in respect of the challenge to the finding recorded at [5] in the Schedule of Findings (see §26 below);

   b) I would allow the appeal in respect of the challenge to the finding against the aunt recorded at [6] (see again §26 below) and would set that part of the finding aside.

Background facts

8. What follows is an outline of the background facts which are either uncontroversial, or as found as facts by the Judge.

9. The father is 33 years of age; his sister, the aunt, is 29 years of age. The mother is 25 years of age. The mother, father and aunt are all from Pakistan. The mother and father came to the United Kingdom on student visas in September 2023 and settled in the Manchester area. The mother and father had earlier married, in June 2022, although the father has a wife in Pakistan, and three children there. There was an issue in the hearing before the Judge as to the state of the parents' marriage, which was said to be in difficulties at the material time. The mother is an intelligent woman who is a university graduate; she was enrolled to undertake a post-graduate degree at a university in the UK. In fact, she withdrew from her course on 6 February 2024.

10. The aunt came to the UK with her husband on a Skilled Worker Migrant Health and Care visa, with permission for an accompanying spouse, in July 2023 and they settled in the Luton area. The aunt is also an educated woman, and a university graduate. She applied for asylum in the UK on 24th September 2024, claiming that she was a victim of trafficking. We were told by Ms Taylor at the hearing that the Secretary of State for the Home Department has written to the aunt's immigration lawyers to confirm that she accepts that the aunt is a victim of trafficking, but the aunt's application for asylum has not yet been definitively adjudicated.

11. When the mother came to this country, she was already pregnant. This was verified by ultrasound scan in November 2023, and the due date was given as 6 June 2024. In early 2024, a further scan showed normal and healthy baby development.

12. In early February 2024, the aunt sent a distressed message to the father asking to be collected from her home in Luton, and to be offered a safe haven in Manchester away from her husband, who it was said was being violent and abusive to her. On or about 10 February 2024, the parents travelled to Luton, collected the aunt and returned with her to the Manchester area. For the next two or three weeks, the aunt and the parents lived together in a shared house, sleeping together in the same bedroom. The aunt was also pregnant at that time – though less advanced in her pregnancy than the mother.

13. The evidence before the Judge revealed that on 14 February 2024, an online booking was made at a local clinic in Manchester for a termination of pregnancy. The booking was made in the aunt's name, but the mother's e-mail address (with possible errors of spelling) was provided. This booking was scheduled for 27 February; the aunt denied in evidence that she had made the booking. History relates that neither the mother nor the aunt attended for that appointment.

14. On 17 February 2024, the mother attended a local hospital and requested a termination of her pregnancy. She told the midwives that her husband did not want the baby; she also said that she had been informed that the baby was not growing properly and there was a problem with the foetal heart. There was no apparent truth as to the assertions about the baby's health. The mother was advised that she was beyond the legal limit for a termination.

15. On 25 February, the mother attended an Accident & Emergency department of a local hospital with vomiting and stomach pain. She was assessed as being in labour, and was moved to the labour ward of a nearby hospital. Once there, S was born. At birth, S was 25 weeks and 3 days' gestation. Unsurprisingly, she required urgent and intensive medical treatment; S remained in hospital until June 2024. By reason of her extraordinary prematurity, S is developmentally delayed (even after the appropriate adjustment) and has some special needs.

16. At the point of her delivery, clinicians noted the remnants of a hexagonal tablet in the mother's perineum (the Judge refers to this as 'pink' in the judgment at [3]) and the remnants of a white tablet and/or sediment ("white powder": judgment [28]) on or near the mother's vulva. It appeared that the tablet had been passed vaginally during the birth along with the amniotic fluid. Forensic testing of the tablet confirmed it to be misoprostol. A function of misoprostol is termination of pregnancy. The mother claimed at the time to know nothing about the tablet.

17. On 29 February 2024, the mother discharged herself from hospital and was described as suicidal. The police were notified; S was made subject to police protection powers.

18. On 1 March 2024, the police made a visit to the parent's home; the aunt was present. A leaflet for a drug Cytotec was found in the bedroom used by the three adults; Cytotec contains misoprostol and is a prescription medication, commonly used to prevent gastric ulcers. It is contra-indicated in pregnancy as it is known to induce or augment uterine contractions; vaginal administration of Cytotec, outside of its approved indication, has been used as a cervical ripening agent, for the induction of labour. Cytotec tablets are typically white in colour. At the home, the police took possession of a jacket belonging to the aunt. When the pockets of the jacket were searched, a strip of tablets was found bearing the brand name 'Breeky'. 'Breeky' is a prescription drug; it contains one main active component, namely misoprostol, and is primarily available in Pakistan. The drug helps to treat many health conditions, but one of the main uses of 'Breeky' tablets is for abortion. It was accepted that the residue of the pill located in the mother's vaginal area was not 'Breeky'; the Judge later found that the residue of the tablet was "consistent with the appearance of the drug Cytotec".

19. The parents were arrested and interviewed. On 4 March 2024, the Local Authority commenced care proceedings. Later that month, the aunt travelled back to Pakistan; while there, she was said to have had a miscarriage.

20. The final hearing of the application for a care order and placement order took place over ten days, spread over several months; there was a regrettable hiatus part-way through the final hearing, in order to complete the disclosure of police evidence. The Judge heard evidence from a number of professional and lay witnesses. The bundle of documents ran to some 8,490 pages; there was a separate digital bundle which included video footage taken from body-worn cameras worn by the police on their visit to the home (referred to at §18 above).

The Findings of Fact

21. There has been no small amount of confusion about the factual findings which were actually made by the Judge at the conclusion of the final hearing of these applications.

Although it is possible to isolate particular factual findings from within the judgment, a record of findings had been drawn into a schedule in a *draft* final order and agreed by trial counsel as is customary (see §51 - §53 below). Some days after the judgment (believed to be 5 October 2024), that agreed *draft* final order was sent to the Judge for her approval and for ultimate sealing by the court.

22. On or about 10 October 2025, the aunt's solicitors filed an Appellant's Notice, and lodged with the appeal documentation the agreed *draft* of the final order. No one thought to draw the Court of Appeal's attention to the fact that the filed order was not yet sealed, and was indeed only a *draft*. The appeal bundles which were lodged some time later contained the same version of the *draft* order. The Skeleton Arguments were prepared by counsel on all sides on the basis of that *draft*. Permission to appeal had been granted on the basis of that *draft* on 5 November 2025.

23. The schedule to the *draft* order contained two serious purported findings of fact:

    i) That "the mother, or the mother and father have attempted to procure an abortion outside of the legal time limit" (factual finding [3i] in the original draft: 'FF[3i]'));

    ii) That "the mother and/or the father have colluded with … the paternal aunt, in a deliberate act with the intention of procuring an abortion outside the legal time limit" (factual finding [3ii] in the original draft: 'FF[3ii]').

24. On the day before the appeal hearing, as Ms Taylor undertook her final review of the filed documents within the proceedings (as she later explained), she discovered that when the Judge had considered the *draft* order which had been submitted to her by counsel (see §21 above) for her approval, the Judge had in fact made amendments to the schedule of findings. She had deleted FF[3i] and FF[3ii] from the original schedule (see §23 above), and replaced those findings with an altogether different finding which is set out at [5] in §26 below. This change had been effected without consultation with the parties. I pause here to observe that there was no clearly identifiable discussion within the judgment which would readily support finding FF[3ii], and its removal can therefore be reasonably understood; the simultaneous removal of FF[3i] was, to my mind, a surprising casualty of this editing exercise. The Judge had apparently sent the revised approved final order to the lawyers for the parties on or about 6 October 2025, but by error or oversight it appears not to have been sent to the lawyers for the aunt. The approved final order was not in fact sealed by the Family Court until 22 December 2025; the delay in sealing the order appears to have been caused by a failure (unclear by whom) to upload the approved order to the Family Public Law ('FPL') Portal (the repository of all documents filed in respect of any given public law application).

25. When it was brought to our attention that all the parties in this case, and the Court, had been working from an incorrect version of the final order, steps were immediately taken to ensure that the unrepresented respondents (who had been excused from attendance at the appeal hearing) had a chance to comment on the changes to the schedule and the altered focus of the appeal. No party raised any objection to us proceeding to hear the appeal on the basis of the findings set out below.

26. The relevant findings of fact (which I have taken from the schedule to the *final sealed* order which was approved by the Judge) are as follows:

    1. "The mother attended at [hospital] on the 17 February 2024 seeking a termination of pregnancy which was refused as she was over the 24 week period.

    2. The mother presented at Accident and Emergency at [hospital] on 25 February 2024 at 25 weeks and 3/4 days gestation. She was assessed as being in labour and transferred to [hospital] where she gave birth to [S]. It was a violent birth and the child was in a very poor condition requiring resuscitation and a lengthy stay in NICU.

    3. At delivery clinicians noted the remnants of a hexagonal tablet in the mother's perineum and the remnants of a white sediment on the mother's vulva, consistent with the tablet having been passed vaginally during the birth along with the amniotic fluid and consistent with the appearance of the drug Cytotec.

    4. Forensic testing of the tablet confirmed it contained misoprostol. Cytotec is a prescription only drug used to terminate a pregnancy.

    5. [The aunt] had 'Breeky' tablets which also contain misoprostol **and it is likely that she brought the Cytotec tablets to the parents' room where she was sleeping**.

    6. The mother, father or [aunt] put the misoprostol tablet into mother's vagina.

    7. As a consequence of the above behaviour, the child has suffered physical harm and is at risk of suffering physical and emotional harm and neglect and her social and behavioural development being impaired".

27. The findings which are the subject of this appeal are now those which are underlined in the text in §26 above. To recap, finding [5] (above) had replaced FF[3i] and FF[3ii] from the original *draft*.

28. In its Skeleton Argument filed in early-December 2025, the Local Authority made clear that it did not in fact oppose the setting aside of finding [6] insofar as it affected the aunt. The first half of the sentence in finding [5] had never been controversial. Thus, the focus of the appeal was on the second half of the sentence in finding [5] which is identified above additionally in bold.

The Judgment under review

29. The reserved judgment runs to 179 short paragraphs over 20 pages. Given the limited focus of this appeal, I can concentrate on a relatively few key passages to identify the Judge's approach to the challenged findings.

30. *What was in issue at the final hearing?* It is clear from the judgment that by the time of the final hearing of the care proceedings "neither the mother nor the father challenged the evidence that [S]'s birth had been induced by the use of misoprostol" (judgment [8]). The mother had, earlier in the proceedings, suggested that the aunt may be personally responsible for causing the termination by inserting a tablet

containing misoprostol into her vagina, hence the aunt's joinder as an intervenor. The Judge further records that:

> "[36] There is no issue as to the findings sought in respect of the circumstances of [S]'s birth …, and for the proposition that the tablet found had been passed vaginally during birth, along with the amniotic fluid. Nor is there any dispute to the finding that the tablet found was misoprostol, and that the function of misoprostol is to induce labour, and thereby terminate pregnancy".

The Judge recorded that the disputed facts at the final hearing included:

> "[40]… who placed the tablet in the mother's vagina, who bought Cytotec, the brand name of the hexagonal pink tablet, into the household, and what did the adults in the room know about the abortion attempt".

31. *Credibility*: The Judge addressed the issue of credibility of the protagonists at various points in the course of her judgment. She expressly remarked that the evidence of the parents "is of utmost importance" and that the "court should form a clear assessment of their credibility and reliability" (judgment [57]). She guarded herself against adverse findings based on the "fallibility of memory and the pressures of giving evidence" (judgment [58]). This theme was developed in the following passages:

    i) The Judge observed that the mother "asserts" that she did not ask for a termination on 17 February 2024 when attending a local hospital (see §14 above), "and that the information recorded by the nurses was incorrect, and has arisen from a failure to secure an interpreter" (judgment [42]); she had "denied requesting the termination" (judgment [86]);

    ii) The Judge later went on to find that the mother had certificates which confirmed that she had a degree of competence in the English language and "had sufficient language skills to express herself" (judgment [78]); the Judge gave a full account of the evidence of the midwives who attended to the mother on 17 February 2024; one of the midwives found that her conversation with the mother in English was "coherent and appropriate" (judgment [83]); the Judge expressly preferred the evidence of the midwives (judgment [87]);

    iii) "It is self-evident in this case that one of the adults must be responsible for inserting the tablet in the mother's vagina. As all three deny responsibility, <u>at least one must be telling a lie</u>" (judgment [60]);

    iv) "The court must remain cognisant that a witness may tell lies during an investigation and the hearing for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about all matters. *R v Lucas* [1982] QB 720 applies equally in family proceedings: *Re H-C (children)* [2016] EWCA Civ 136. The lie in the criminal jurisdiction is never taken of itself as direct proof of guilt, nor should it in the family proceedings, but a lie may be capable of amounting to corroboration" (judgment [61]);

v) The Judge found that the father was "evasive" in his answers about messages on his phone, and "gave convoluted evidence" about the arrangements made for him and his wife to come to the UK (judgment [115] and [116]);

vi) The Judge appeared dismissive of the aunt's evidence on key topics (judgment §§119-130); she found that the aunt and the parents had 'not assisted' the court in determining who had inserted the tablet into the mother's vagina and who had brought Cytotec into the home, and that "the evidence given by each was contradictory, confusing and unhelpful" (judgment [131]).

32. The Judge made an important finding about the state of the relationship between the mother, father and aunt (judgment [134]):

> "I do not accept the Local Authority's submissions that the mother and [the aunt] had a close friendship, I do not see that on the evidence. The standout feature of all three adults when giving evidence was the seeming indifference each had to the other: Husband to wife, wife to husband, sister to sister-in-law, brother to sister, and sister to brother. But I do accept that abortion was a topic discussed between them, and that the respective problems each had were known to the other family members" (Emphasis by underlining added).

33. I turn now to the Judge's analysis and reasoning for the two findings under review in this appeal. I discuss the judgment in relation to finding [5] and then finding [6] even though the Judge actually dealt with these issues in reverse order in the judgment.

34. *Who brought Cytotec into the bedroom (finding [5])?* The Judge recorded that the parents and the aunt all denied that they brought Cytotec into the household (judgment [43]). That said, the Judge also noted that "the mother denied all knowledge of a tablet" at all when interviewed by the police at the hospital on 1 March 2024 (judgment [92]). As for the aunt, the Judge said this (judgment [124]):

> "[124] [The aunt]'s evidence about abortion tablets was difficult to follow. After the father's arrest the police visited and spoke to [the aunt]. 'Breeky' tablets, which are misoprostol, were found in her coat pocket. [The aunt] told the police that the tablets had been given to her by her husband, as they were good for her. In her evidence [the aunt] at first accepted that she knew they were 'Breeky' tablets, and then later denied that she knew what they were. The evidence from the police investigation shows a photograph of the tablets seized, and they are clearly marked 'Breeky', which accorded with [the aunt]'s earlier evidence.
>
> [125] [The aunt], prior to leaving Luton, and coming to Manchester with the parents, had recorded on the father's phone a conversation she had with her husband. In that conversation [the aunt's husband] asks, "What did I do

> wrong?", and the response from [the aunt] is, "Didn't you say take the pills, get rid of the baby, okay?" [The aunt's husband] responds, "You're not proving anything, first you say one thing, then you say something else, even if I said something in anger, but how many times have you yourself said, '… let's go get the child washed'?" Later it goes on, "I felt hurt and angry and then I blurted out, 'Go, do whatever you want, take the pills and end it'.
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> [126] There are further recordings between the two. During those recordings [the aunt] questions whether [the aunt's husband] ever considered her a wife. "Should I live with the child or kill the child? And go see your wife, go see your kids".
>
> [127] [The aunt], as I have already said, has two undergraduate degrees, she is an educated woman. She denied that she was aware that 'Breeky' tablets could induce an abortion, and relied on her husband saying they were good for her."

35. In the Judge's analysis she added this (judgment [131]):

> "Neither the mother, father or [the aunt] assisted the court in determining the issue of who inserted the tablet, who brought Cytotec pills into the house, and who knew what. The evidence given by each was contradictory, confusing and unhelpful."

36. Her conclusions on this point are recorded thus:

> "[137] As to who brought Cytotec into the household, the evidence is slightly clearer, and I can find that [the aunt] had other abortion tablets aside from the 'Breeky' tablets given to by her husband, as otherwise the recording that I have referred to [in [125]] simply does not make sense, and therefore she is likely to have brought the Cytotec.
>
> [138] The topic of abortion was, as I have already found, likely to have been discussed with all three adults. The leaflet on the use of Cytotec was found in the room. I know that the father would seek to distance himself from topics of conversation that he said "only girls" would talk about, but I remind myself that the recording was on the father's own phone…".

37. *Did the evidence support the 'pool' finding that the aunt inserted the tablet (finding [6])?* The Judge recorded that the mother said that she had slept in tights (judgment [108]); this is referenced in the Judge's discussion of the evidence relevant to finding [6] which is at (judgment [109]):

> "The mother's descriptions of how ill she was on 24 February, and whether she was heavily asleep, rendering her unable to know if someone had placed a tablet in her vagina, have varied throughout the litigation. In her evidence she appeared to accept that, however ill she was, she would have been sleeping and not unconscious. She stated she had not been woken, her tights remained in place in the morning and that, if someone had tried to remove them, she would have been disturbed."

38. As for the aunt's potential involvement in administering misoprostol vaginally, the judgment continued (judgment [123]):

> "[The aunt] denied inserting misoprostol into her sister-in-law's vagina, and expressed revulsion at the prospect".

39. The Judge discussed the apparent awareness among wider family members of the fact that the mother had had an abortion on 25 February 2024, when they attended hospital on the evening of the 29 February or 1 March; the evidence is that one of them had, unsolicited, revealed knowledge that the mother had had "an abortion" ("Is it about her having an abortion?", or "is that because she had an abortion?" (judgment [129] / [135])). Having discussed those specific matters, and without any further discussion, preamble or explanation, the Judge then advanced straight to her conclusion and finding as follows (judgment [136]):

> "…having considered the evidence carefully, I cannot on the balance of probability say whether it was the mother, father or [the aunt] who inserted the tablet".

Grounds of Appeal

40. The Grounds of Appeal are as follows:

(i) Ground 1 – The Judge's reasoning and approach to the evidence was flawed and failed to meet the minimum standard of adequate reasoning, having regard to the seriousness of the allegation and the material before the court.

(ii) Ground 2 – The Judge has erred in law and fell into error by providing a judgment that does not adequately set out the evidence, any adequate analysis of the key features of that evidence, does not adequately record the parties' core case on the issues, does not evaluate the evidence as a whole or explain why findings were made

(iii) Ground 3 – The Judge has erred in law and fell into error to find that the evidence did support findings made against the intervenor.

(iv) Ground 4 – The Judge has erred in law and fell into error by failing to address the issue of lies, dishonesty, the weight to be attached to them and their relevance to the key issues in the case.

(v) Ground 5 – The Judge has erred in law and fell into error by failing to examine each of the three named potential perpetrators and their likelihood of each of

them individually having perpetrated the alleged act.

41. Although these Grounds were originally directed towards a different factual finding, Ms Taylor effectively adopted them in pursuing her more limited argument in relation to the only finding in contention, namely the second half of finding [5].

Arguments on Appeal

42. Given the much reduced scope of the appeal, counsel were able to make short and focused oral submissions to supplement their written arguments.

43. Ms Taylor argued that the Judge had failed take any or any proper account of a range of factors relevant to the aunt's circumstances which rendered it improbable that she would have had the Cytotec drug and/or brought it into the parents' bedroom at their home in Manchester. She asserted that the Judge had underestimated the effect on the aunt of the domestic abuse from which she had fled, and argued that the aunt had "consistently" maintained that the only drugs which she had in her possession were the 'Breeky' tablets. There was no evidence from the police search which linked the Cytotec tablets to the aunt; Ms Taylor argued that it would "make no sense" for the aunt to have more than one type of drug to procure an abortion. She argued that not enough "weight" had been given to the aunt's distressed state at the relevant time.

44. Ms Cheetham suggested that the fact that the aunt had one drug in her possession containing misoprostol rendered it more rather than less likely that she would have another, similar, drug, particularly as she was (it appears) considering a termination for herself. She relied on the recorded discussions between the aunt and her husband in which there was reference to "lots of tablets", and abortion. She relied on the Judge's finding that the aunt's evidence about drugs was "difficult to follow" (judgment [124]: see §34 above) and she directly challenged Ms Taylor's argument that the aunt had been 'consistent' in her account of possessing only 'Breeky' tablets, drawing our attention to the internally inconsistent oral evidence of the aunt at the hearing.

The law: Appeals against Findings of Fact

45. We were addressed at some length (particularly in the written arguments) on the law in this area, but as this is familiar appellate territory, and the remaining issue is narrow, it requires little detailed discussion here. I propose to address three issues.

46. *(1) Why is there an appeal against findings of fact in this case?* In family cases, appeals against findings of fact are most commonly heard when the contentious facts, as found at first instance, would be likely to have a direct impact, or have had a direct impact, on the decision-making and/or order(s) made in respect of the subject child(ren): see for example *Re B (Split Hearings: Jurisdiction)* [2000] 1 WLR 790 (at p.798), [2000] 1 FLR 334. It is accepted that the findings of fact made against the aunt in this case have no bearing whatsoever on the decisions or orders made in relation to S. There is no prospect of the aunt maintaining any form of relationship with S in the future; planning is well-underway to find S an adoptive home. Indeed, the condition attached to the grant of permission to appeal was that "the care planning for the child [S] is not to be delayed or interrupted because of the appeal".

47. There are smaller, but not unimportant, categories of case where permission to appeal may well be granted in relation to findings of fact in a family case. For example, where it appears that the rights (under the European Convention on Human Rights) of the person against whom the findings have been made (who may have been a witness in the hearing, not a party) have been breached in a material way; see, for a discussion of this, *Re W (A child)* [2016] EWCA Civ 1140. Further or alternatively, permission may be granted where (as here) the contentious findings are of particularly heinous behaviour which has caused, or has been held likely to cause, significant harm to a child; such findings may be relevant to the protection of children generally or the child(ren) (current or prospective) of the person against whom findings are made. While there are many reasons, (rooted in policy, cost, delay and practicality) for the appellate court *not* to indulge appeals against findings of fact generally (see Lord Neuberger in *Re B* [2013] UKSC 33 | [2013] 1 W.L.R. 1911 (‘*Re B’*) at [52]), a third category may be one rooted on the grounds of public interest (particularly if fresh and potentially cogent evidence becomes available) for the reasons spelled out by Wall LJ in *Re K (Non-Accidental Injuries: Perpetrator: New Evidence)* [2004] EWCA Civ 1181, [2004] 3 FCR 123, [2005] 1 FLR 285 at [55] and [56]:

> “[55]… it is in the public interest for those who cause serious non-accidental injuries to children to be identified, wherever such identification is possible ….
>
> [56]… it is in the public interest that children have the right, as they grow into adulthood, to know the truth about who injured them when they were children, and why. Children who are removed from their parents as a result of non-accidental injuries have in due course to come to terms with the fact that one or both of their parents injured them. This is a heavy burden for any child to bear. In principle, children need to know the truth if the truth can be ascertained”.

48. Peter Jackson LJ had determined the application for permission to appeal in this case on the basis that the aunt appeared to have had a proper challenge to the serious finding that she had colluded in a deliberate act with the intention of procuring an abortion outside the legal time limit (i.e., FF[3ii]). This finding would plainly have implications in relation to the risks to her own children prospectively; it was further argued by Ms Taylor that the findings may have adverse implications for her asylum claim. Peter Jackson LJ further identified the finding about the procurement of Cytotec as an additional reason for the grant of permission; had that been the *only* finding under challenge when the papers were considered at the permission stage (as it is now), it is doubtful whether permission would have been granted.

49. *(2) The difficulties of appealing against findings of fact:* Both counsel addressed us on the well-known passages from *Volpi & another v Volpi* [2022] EWCA Civ 464, [2022] 4 W.L.R. 48 (‘*Volpi*’); *Piglowska v Piglowski* [1999] 1 WLR 1360; *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29; *Re B* (above), and *Re A (No.2) (Children: Findings of Fact)* [2019] EWCA Civ 1947; [2020] 1 FCR 313, [2020] 1 FLR 755 (‘*Re A (No.2)*’) (at [92], and see also [93]-[99]). It is unnecessary to rehearse those passages at length here. For present purposes, I simply extract from those passages, the following points of relevance to us:

a) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong;

b) It is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it;

c) Unless a finding is insupportable on any objective analysis it will be immune from review;

d) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

50. *(3) Finding made by the Judge not sought by any of the parties (Finding [6]):* The fact that neither the Local Authority nor any other party sought a determination of the facts which in the end led to finding [6] does not mean that the Judge was not entitled to make that finding having heard the evidence; a Judge can take a proactive stance and is not required to follow a schedule of proposed findings sought by the local authority. That said, if a Judge makes findings which have not been sought, they must exercise particular caution, in particular to ensure that the process has been fair: see again *Re A (No 2)* (at [96]) and see also *Re G and B (Fact-Finding Hearing)* [2009] EWCA Civ 10; [2009] 1 FLR 1145 (‘*Re G and B*’) (at [15]/[16] per Wall LJ). If the Judge is tempted to go “off piste”, they:

> “[16] … must be astute to ensure; (a) that any additional or different findings made are securely founded in the evidence; and (b) that the fairness of the fact finding process is not compromised”.

Court Order: Recording of Findings of Fact

51. It is the standard practice in private law family cases involving domestic abuse to set out in a schedule to the relevant court order the factual findings of the court. This is indeed explicitly required by PD12J Family Procedure Rules 2010 (‘FPR 2010’), para.29:

> “The court should, wherever practicable, make findings of fact as to the nature and degree of any domestic abuse which is established and its effect on the child, the child's parents and any other relevant person. <u>The court must record its findings in writing in a Schedule to the relevant order</u>, and the court office must serve a copy of this order on the parties” (Emphasis by underlining added).

52. There is no similar requirement for recording a schedule of findings in the relevant order, or as a schedule to the order, at the conclusion of a fact-finding or final hearing in public law cases. PD12A FPR 2010 (‘Care and Supervision… Guide to Case Management’) is silent as to this, as is the Public Law Outline. The ‘Standard Orders’

template for public law does not make provision for a schedule of findings (Order 8.5, Public Law final), nor for the appending to the order of the definitive (proven) statement of 'threshold' facts (under section 31(2) CA 1989).

53. That said, a widespread though not universal practice has emerged whereby final public law orders, and orders made at the conclusion of a fact-finding hearing in public law proceedings, routinely incorporate a schedule of the court's findings (as here), or have the threshold statement appended to them. Hershman and McFarlane on Children Law and Practice (Issue 103: December 2025) endorses this approach at [C803] where it is said that: "The court should set out exactly the findings it has made in a court order or in a schedule attached to an order". The practice (and the reference in Hershman and McFarlane) may well have its genesis in a comment of Ward LJ giving the judgment of this Court in *Re M (Allegations of Rape: Fact-Finding Hearing)* [2009] EWCA Civ 1385, [2010] Fam Law 452 at [1]:

> "It really is high time that orders are made reflecting what was found. It is perfectly simple to attach a schedule to the judgment setting out exactly what findings were made."

54. In light of what has happened in this case, I would encourage the Lead Judge of the Public Law Working Group (Judd J) and the Lead Judge of the Standard Orders Group (Peel J) to consider whether steps should now be taken, in liaison with the Family Procedure Rules Committee or otherwise, to formalise the practice outlined above.

55. The issue of general practice aside, where a schedule of findings is included in, or appended to, the relevant court order, it must accurately reflect the findings set out in the reasoned judgment. Before taking any appellate step of significance, an applicant must ensure that the schedule has been approved by the judge. It is likewise incumbent upon an applicant for permission to appeal to confirm that the order lodged with the Appellant's Notice is the *sealed* order of the court below, and not merely a *draft*. None of these basic steps was taken in the present case, with regrettable and frustrating consequences for all involved in this appeal. Indeed, as I have hinted at above (§48), the appeal may never have passed the permission stage had the true extent of the findings under challenge been appreciated.

56. One final point (which only emerged in the hearing itself) deserves mention. The lawyers for the intervenor in these public law proceedings did not have automatic access to the documents uploaded onto the FPL Portal. This was not, in itself, irregular as access to the Portal will generally only be available by the applicant and respondents to the application, unless there is agreement from all parties that an intervenor can have the same (unrestricted) access. This meant that the aunt's lawyers could not in fact check the Portal for the final *sealed* order, and it appears not to have been sent to them by the Judge or any other party.

57. To minimise the risk of a recurrence of this difficulty, it seems to me that, in cases involving an intervenor, a case management order could – and in my view should – as a matter of routine provide that, where an intervenor is joined to the proceedings, the court will appoint one of the parties (failing agreement, the local authority) to assume responsibility for ensuring that the intervenor is provided, in real time, with all filed documents to which they are entitled, including of course the final sealed order.

Findings of Fact [5] and [6]: Discussion

58. The Judge had before her a substantial body of written material in the form of witness statements and reports. In addition, the parties had filed – and the court had considered – a significant volume of digital and video evidence. Crucially, the Judge also heard extensive oral evidence over several days. She observed the parents and the aunt giving evidence (the latter joining the hearing remotely), and the aunt was examined and cross-examined over the course of two court days. The Judge was therefore in a singular position to assess the credibility and reliability of the witnesses (see *Volpi* at [65(iii)]), and it is apparent from her judgment that she did so. It is beyond doubt that the Judge had "been exposed to a wider range of impressions that influence a decision on factual matters than will be available to a court of appeal" (per Lord Kerr in *Re B* at [108]).

59. Notwithstanding the length of the hearing and the extensive volume of material available, the judgment under review is somewhat sparse in its detail, and contains only limited references to the not insubstantial body of evidence to which I have referred. There is some force in Ms Taylor's submission that the judgment does not represent a particularly thorough record of these lengthy and complex proceedings. However, the Judge was under no obligation to rehearse all of the evidence nor was she obliged to record the entirety of the parties' submissions. Her task was to produce a judgment which provided an adequate account of the material relied upon, properly analysed, and demonstrating that she had considered and evaluated the evidence with appropriate care.

60. Overall, I am satisfied that she did achieve this. Although in certain areas the judgment could have been better and/or more expansively expressed, there is at least a sufficient basis for this Court to conclude that the Judge carried out her assessment of the witnesses and the evidence, to which due deference should in the circumstances be given. I am further satisfied that she drew the various strands of the evidence together in a manner which adequately supported her ultimate conclusions on the key issues.

61. *Finding [5]*: As it happens, as I have explained above, in this appeal we are now concerned with an extremely limited disputed factual finding contained within the second half of finding [5] (see again §26 above). We may interfere with the Judge's finding only if we are satisfied that "no reasonable judge could have reached" the conclusion which she did (see §48(b) above).

62. There was no dispute that "[the aunt] had 'Breeky' tablets which also contain misoprostol"; although there was no direct evidence to link the aunt with the Cytotec tablets, the Judge was entitled in my judgment to draw the inference from all of the evidence that it was "likely" that the aunt additionally had Cytotec tablets, and that she took them to the "parents' room where she was sleeping". I say so for the following reasons, in combination:

    a) As it was indisputably established that at the material time the aunt had in her possession packets of 'Breeky' (misoprostol) tablets, it seems to me that it was just as likely that she would have in her possession other tablets with similar pharmacological properties. In this regard, I reject Ms Taylor's submission that it 'made no sense' for the aunt to have had more than one drug in her possession containing misoprostol;

b) We have been shown no evidence in this appeal that the parents had at any time acquired on prescription, or otherwise had in their possession, Cytotec tablets;

c) In the recording of the conversation between the aunt and her husband prior to leaving Luton (see judgment [125] at §34 above), the aunt is heard to say to her husband "Didn't you say take the pills, get rid of the baby, okay?". The husband is heard to respond: "how many times have you yourself said, "…, let's go get the child washed'?". This exchange reveals that the aunt knew that "pills" in her possession had abortion-related properties, and sat awkwardly with her evidence that she believed that 'Breeky' tablets were "good" for her (judgment [124]);

d) The aunt was unable to identify what "pills" were being referred to when she confronted her husband with the comment "Didn't you say take the pills…"; the Judge was entitled to infer that the aunt was not referring to the 'Breeky' tablets (judgment [128]);

e) The Judge was plainly sceptical (judgment [127]) that the aunt – as an educated woman – did not know that the 'Breeky' tablets could induce an abortion;

f) The Judge was in a better place than us (see §58 above) to assess the evidence about the aunt's use of pills. I accept Ms Cheetham's submission (having been taken to the transcript) that the aunt's evidence about the 'Breeky' tablets had been internally inconsistent (the Judge observed at [124]: "at first [the aunt] accepted that she knew they were 'Breeky' tablets, and then later denied that she knew what they were"); the Judge was entitled to find the aunt's "evidence about abortion tablets … difficult to follow" (judgment [124]), and this would unsurprisingly inform the Judge's assessment of the evidence which contributed to the finding under challenge;

g) There was evidence before the Judge which linked the aunt to a telephone call to a clinic on 14 February 2024 requesting an appointment for a termination of pregnancy; the Judge appears to have accepted that it was the aunt who called the clinic (see judgment [133]), as she wished to "understand her options";

h) The Judge had formed a dim view of the aunt's credibility generally (see above).

63. On two counts, I am unpersuaded by Ms Taylor's argument (see §43 above) that the Judge had failed to make allowances for the aunt's distressed state when leaving Luton and/or arriving in Manchester when making finding [5]. First, I cannot see why the fact that she was distressed as a consequence of domestic abuse would it make any less likely that she would have Cytotec with her. Secondly, in any event, it is clear that the Judge did in fact acknowledge the aunt's "diagnosis of PTSD" and that the aunt has been "treated for considerable anxiety" (judgment [119]).

64. Having considered the arguments with care, I am satisfied that this is not one of those rare cases in which this Court should interfere with the factual finding made in the court below. To my mind it is sufficiently secure, and the finding about the Cytotec (finding [5]) therefore stands.

65. *Finding [6]*: As I mentioned above (see §28) the Local Authority indicated some weeks ago that it would not oppose the aunt's appeal against the finding that she "put

the misoprostol tablet into mother's vagina". For the reasons which I set out below, I regard the Local Authority's concession as appropriately made.

66. First, this finding implicating the aunt in a collusion with the parents was not one which was sought by the Local Authority at the final hearing; it did not feature in the proposed threshold document, and it was not a finding sought by any other party. This is not of course to say that the Judge could not have made the finding anyway, but, as I have discussed above, a higher degree of care would be required by a first-instance judge taking a proactive, quasi-investigative approach, to ensure that the finding was "securely founded in the evidence" (*Re G and B*), and that the process was fair, if she were to do so. There is little evidence in the judgment of that required additional level of care in the Judge's approach to this finding.

67. Secondly (and linked to the final sentence above), there is no analysis in the judgment of the likelihood of each or any of the adult parties committing this act, nor does the Judge undertake any form of balancing of the factors which might properly need to be weighed in order for any of them to be identified as the perpetrator of the act. In this regard, it is not possible to discern how the Judge reached this conclusion in relation to the aunt; the finding is plainly not supportable on the basis of the Judge's findings about lies alone, and her analysis in this area of the case otherwise is, I regret, deficient.

68. Thirdly, this allegation was not particularised by the mother (i.e., how or when the aunt is said to have inserted the tablet), nor was it put to the aunt in cross-examination that she had done so, save in the most general and non-accusatory of terms. As the Supreme Court observed in *Griffiths v Tui (UK) Ltd.* [2023] UKSC 48; [2023] 3 WLR 1204 at [70] it is a general rule in civil cases – in order to safeguard fairness of the process – that a party is "required to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted". The Court added:

> "(v) Maintaining such fairness also includes enabling the judge to make a proper assessment of all the evidence to achieve justice in the cause. The rule is directed to the integrity of the court process itself.
>
> (vi) Cross-examination gives the witness the opportunity to explain or clarify his or her evidence. That opportunity is particularly important when the opposing party intends to accuse the witness of dishonesty, but there is no principled basis for confining the rule to cases of dishonesty" (Emphasis by underlining added).

These points apply equally in family cases. Thus, in this case, if the Judge were minded to include the aunt in a 'pool' of perpetrators responsible for the act of procuring an unlawful abortion, she should have given the aunt the chance to give full answers to a particularised charge, and/or to refute any accusation of dishonesty in this respect. The aunt was deprived of that chance, and the Judge was correspondingly denied the opportunity to make "a proper assessment" of this assertion "to achieve justice in the cause". There is, perhaps unsurprisingly in the circumstances, no judicial analysis to support this finding, which would in my view

have been necessary; the Judge needed, among other things, to address the inherent improbability of the aunt performing this extraordinarily invasive act on someone she did not know well, and with whom she was found to have an 'indifferent' relationship.

Conclusion

69. In the circumstances, and to confirm the conclusions presaged at the outset of this judgment (§7), I would therefore:

    1. Dismiss the appeal in respect of the challenge to the finding recorded at [5] in the Schedule of Findings;

    2. Allow the appeal in respect of the challenge to the finding against the aunt recorded at [6] in the Schedule of Findings;

    3. Amend finding [6] to remove reference to the aunt.

Lord Justice Jeremy Baker

70. I agree.

Lord Justice Coulson

71. I agree that, for the reasons given by my Lord, Lord Justice Cobb, the appeal in relation to finding [5] should be refused, and the appeal in relation to finding [6] should be allowed. There was no finding in the judgment that tallied with finding [6], nor any part of the judgment on which that finding could properly have been founded.

72. It seems to me that, when a judge in a family dispute has to set out a schedule of the key findings of fact as part of the court order, he or she ought to do that by reference to the particular paragraphs of their judgment. It is good practice to set out all findings of fact in the order cross-referenced to a paragraph (or paragraphs) of the judgment. That makes for greater coherence, and avoids any subsequent scrabbling through the judgment to identify scattered references that might support the finding in the schedule. It also acts as a useful cross-check for the judge to ensure that the judgment and the schedule of findings are consistent.