Neutral Citation Number: [2025] EWCA Civ 1570

Case No: CA-2025-001870
CA-2025-002532
FA-2025-000238

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT MANCHESTER
HH Judge Greensmith and District Judge Hatton
MA23P000980 and MA25P00009

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 December 2025

Before :

LORD JUSTICE BAKER
LORD JUSTICE COBB
and
LORD JUSTICE MILES

- -

D (A CHILD) (RECUSAL)

- -
- -

Shaun Spencer KC, Helen Crowell and Linda Sweeney (instructed by **Fieldings Porter**) for the **Appellant**
The **Respondent** appeared in person

Hearing date : 23 October 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 9 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE BAKER :

1. This judgment concerns three linked appeals arising in unusual circumstances in proceedings under the Children Act 1989 involving applications for child arrangements and other orders relating to a boy, D, born in January 2023. The parties to the proceedings are the boy's parents.

Background and history of proceedings

2. The background is as follows. The Respondent mother has an elder child, T, by an earlier relationship with another man. The parties were involved in a relationship as a result of which the mother became pregnant. By the time the mother gave birth to D, the relationship had broken down and the Appellant father's name was not put on the birth certificate.

3. In May 2023, D's father filed an application in the Family Court at Manchester, numbered MA23P00980, for a child arrangements order under s.8 of the 1989 Act seeking contact with D. The mother opposed the application and raised allegations of domestic abuse against the father. In October 2023, the mother filed an application for a non-molestation order against him. Case management directions were given for a fact-finding hearing, and an order made for indirect contact between D and his father.

4. On 24 July 2024, the father issued an application for enforcement of the interim order. The application was allocated the case number MA24P50130. By this time, the mother and D had moved house to the Liverpool area. On 28 July, the enforcement application was therefore transferred from Manchester to the Family Court at St Helens.

5. It was not until October 2024 that the fact-finding hearing took place over three days before District Judge Hatton. At that hearing, both parties were litigants in person. Qualified Legal Representatives ("QLRs") were appointed for each party to conduct cross-examination of the other. As recorded in the judgment, at the mother's request, the court made participation directions, including the provision of screens in court.

6. On 5 November 2024, the district judge handed down judgment. At paragraph 14 he stated:

> "At the beginning of this hearing the parties were agreed that the father should have a role in D's life and that initially supervised contact would be agreeable to both parents. They agreed that supervised contact could progress if and when it was agreeable to the parties and deemed to be safe and appropriate. I asked parties to consider whether this was a way forward that could have avoided the finding of fact hearing having to take place. Upon further submissions from the mother who reflected that she preferred findings to be made regarding the allegations and I decided that the future progression of contact would not be possible without findings being made and the mother was keen for this to happen. So that a factual matrix could be determined as a basis for the parties, the court and CAFCASS in future I proceeded with the finding of fact hearing."

7. Having summarised the legal principles to be applied in fact-finding hearings, the district judge set out his observations about the parties' evidence. At paragraph 27, he said:

> "My first impression of the parties was that each had clearly loved the other party and were gentle in nature. Both are softly spoken and have a calm and respectful demeanour. Unusually they lived out their relationship and set out their feelings at almost every turn in written messages. This has been helpful to me when considering the context of certain events and the nature of the parties."

8. At paragraph 29, he said that his impression of the father was that he "remained consistent with his written statements throughout and came across as truthful and honest in his evidence and particularly in his expression of love for D and his motives for making this application". He was critical of some WhatsApp messages sent by the father, describing them as "somewhat disturbing", but concluded that they were "his frustrated response to the situation" and did not demonstrate a pattern of behaviour that amounted to a risk to D's welfare. He added:

> "It is behaviour that the father will be well advised to desist from in future and makes the mothers point for her that he is in need of a parenting course to assist his communication style and general approach to such actions the relationship and litigation."

9. At paragraph 30, he said that he concluded that the mother's change of position as to the father's role in D's life was "in some part in revenge for what he said in his application to the court" and that "she does not feel that the father is so much of a risk to D than her stated position within these proceedings". He agreed, however, with her view that the father's lack of experience with children required him to undergo a course to develop greater insight.

10. At paragraph 35, he set out a general summary of his findings.

> "I do not find that the mother has proven her allegations to the extent that I find that there is domestic abuse or that I find that the father is a risk to D's welfare if he spends time with him long term and I fully expect that this will be capable of being progressed to face to face unsupervised contact eventually (but in a measured way and subject to Cafcass advice). There are three areas of concern largely relating to the alleged rape, what was described as an unhealthy infatuation with small boys and images of same and also in inappropriate touching of T. As is seen below I do not find these allegations proven to be a welfare concern. There are other allegations that I make findings on which may play a part in the progression of child arrangements and inform the work that needs to be done but are unlikely to lead the court to a view that there should be never any more than either indirect or supervised contact."

On that basis he concluded, first, that there was no compelling reason why the father should not be granted parental responsibility, although he postponed making an order until Cafcass had advised on when and how this should be brought about, and, secondly, that the need for a non-molestation order was "not made out", and that the mother's application should therefore be dismissed.

11. The district judge proceeded to address the twelve allegations made by the mother. He found some of them to be "not proven" and others to be not proven as a finding, or form, of abuse or a welfare concern or issue of risk to D. In his skeleton argument in support of this appeal, Mr Shaun Spencer KC placed seven in the first category and five in the second. As I read the judgment, however, there are six in each category.

12. The allegations which the district judge found to be not proven were (in the order set out in the schedule of allegations and in the judgment) that the father (1) breached GDPR by contacting the mother after she used his taxi service; (2) raped the mother, coercing her into having sexual intercourse on 30 November 2021; (3) "continued to force a relationship and would be physical with the mother at antenatal appointments and show intimidating behaviour causing the mother mental and emotional distress"; (4) continued to contact, harass and stalk the mother after she asked him to stop; (5) harassed the mother's family; and (6) tailgated the mother in an attempt to intimidate her.

13. The remaining allegations on which the judge made the "qualified" finding of "not proven" were as follows.

14. First, the mother alleged that the father had behaved inappropriately towards her elder son T on twelve occasions. The district judge noted that the allegation "was specifically stated by her QLR acting on her instructions not to be an allegation of sexualised behaviour but inappropriate behaviour". He found that the father had touched T on at least one occasion. He noted that T "does not enjoy people he doesn't know touching him" and that the mother's case was that the father had not been given permission to touch him. He found that on one occasion while playing in the garden the father had taken hold of T's arm to stop him falling. As to other occasions, such as when T had hurt his leg and the father had "rubbed it better", the district judge found that they were "not welfare concerns as such but the father, due to his lack of experience, may need guidance or work through a parenting course on what is and is not appropriate".

15. Secondly, the mother alleged that the father posted disturbing images on WhatsApp which caused the mother to distance herself from him. The district judge found that the father had posted images, including of dead bodies, which might upset "a person of a sensitive nature", but concluded that this did not cause the mother to distance herself from him or that it was a welfare concern for the child.

16. Thirdly, the mother alleged that the father would "use images of babies and toddlers in messages and often used images of young boys". On this issue the district judge did not find "that the father is infatuated with young boys as alleged". He concluded:

> "Considering the images in the context of other images posted and how many posts are made by the father who is a prolific user of social media and messaging I do not find that there is a pattern of abusive behaviour by the messages selected as examples."

17. Fourthly, the mother alleged that the father had given her telephone number to other people and members of his family without her permission. The district judge found that the father had given her number to members of his family but added: "I do not find this proven as an attempt to cause her distress let alone abuse and do not find it as a welfare concern or the child".

18. Fifthly, it was alleged that the father had "used medical, emotional and religious manipulation to prompt the mother to allow contact". On this allegation, the district judge made the following brief finding:

> "I do not find this proven as a form of abuse or a welfare risk to D. The motives that the father had were to get to see his son. I accept his physical and emotional health were adversely affected by being denied contact and information. There was, in the bundle, proof of this effect on the father. It is not alleged that he made this up, or that he used it in a way that was abusive. I do not accept that he used manipulation and therefore did not risk offending the child's welfare."

19. Finally, it was alleged that the father had continued to contact the mother and requested to come to her home. The district judge's finding was again set out in brief terms:

> "This is not proven as a form of abuse. I note that this was on the day after he had seen his son for the first time. After being left in the dark on the progress of his relationship with his son I find that the contacts were possibly excessive as stated above but were largely caused by his desire to gain traction in making more regular and meaningful arrangements. The volume and style of communications may have appeared fine to the father in this context, where they are not and need to be tempered the father will benefit from help via parenting courses and confining communications to just child related matters and via a specialist app."

20. Following the hearing on 5 November 2024, the district judge made an order giving case management directions, including provision for a Cafcass report and further statements, and listing a dispute resolution hearing on 24 February 2025. He made an interim child arrangements order for the mother to provide the father with a monthly update on D's progress and permitting the father to send gifts and cards to D. In recitals to the order, the judge recorded that, after sending out the draft of his judgment, he had received a "lengthy document" from the mother which he had considered before handing down the final version of the judgment. The recitals also set out the judge's responses to two points raised by the mother in the document. The order further recited that the mother's application for a non-molestation order and the father's application for enforcement of the interim order (which, as noted above, had in fact been transferred to the Family Court at Liverpool) "are now concluded".

21. On 8 November 2024, the mother filed a notice seeking permission to appeal. The grounds of appeal were contained in a document consisting of 25 single-spaced pages in which the mother made a large number of detailed criticisms of the district judge's findings and reiterated her allegations and arguments about the father's conduct.

22. On 6 January 2025, HH Judge Greensmith dismissed the application for permission to appeal on paper. In giving his reasons, he said:

> "The district judge carefully, clearly and correctly identifies the role of the court and the purpose of the hearing in the judgment …. [T]he judge specifies the evidence relied on to make the findings made. The judge identified what evidence is relevant to the findings and draws conclusions that he is entitled to make. I cannot see how the findings made by the judge were wrong or where there has been a serious procedural irregularity in the proceedings."

23. In his order, Judge Greensmith informed the mother that, as the decision had been made without a hearing, she had the right to ask for it to be reconsidered at an oral hearing. On 8 January, the mother filed an application for reconsideration.

24. Later in January 2025, the father filed another application for enforcement of the interim arrangements made in the order of 5 November 2024. The application was allocated the number MA25P50009.

25. On 15 January 2025, the mother sent a letter to District Judge Hatton asking that he recuse himself from the proceedings. In the letter she wrote:

> "This request arises from several substantial concerns regarding misrepresentation of evidence (as briefly mentioned at the hearing on 5th November 2024) and apparent bias, that have compromised the fairness of your findings in these proceedings…. Several of your findings and decisions during this case create the appearance of bias, particular in your acceptance of [the father's] denials without sufficient scrutiny and logic and the dismissal of key evidence supporting my safeguarding concerns."

The mother asserted that her views on unsupervised contact had been misrepresented, and complained of "preconceived narrative and distortion of facts", dismissal of key evidence, misrepresentations and mischaracterisations, and "judicial excusal of inappropriate conduct".

26. Enclosed in the letter was a document headed "Grounds for Recusal", running to 60 typed, single-spaced pages, in which the mother set out at great length her complaints about the judge's judgment and findings. The document quoted many passages from the judgment, each followed by the mother's extensive challenges and criticisms. On many occasions, the mother introduced the criticism with the words "your judgment demonstrates bias". Examples included the following:

- "Your judgment demonstrates bias by misrepresenting the facts and dismissing evidence that clearly contradicts its conclusions."

- Your judgment demonstrates bias by dismissing clear evidence of a concerning pattern in [the father's] persistent use of images of children, failing to critically analyse the implications of this behaviour within a safeguarding framework."

- "Your judgment demonstrates bias and a lack of contextual analysis by failing to adequately address the pattern of [the father's] coercive and emotionally manipulative behaviour, that created a distressing environment and posed a risk both to my autonomy and the emotional well-being of our child."

- "Your findings that [the father's] application arose from a 'lack of effective communication' demonstrates bias and is not based on fact."

- "Your judgment demonstrates bias by disregarding my detailed and consistent account of events ….".

27. In the final paragraph of the document, the mother wrote:

> "As a Judge, it is both your duty and right to ensure that findings are impartial, fair, and firmly rooted in the evidence presented. However, due to the significant misrepresentation of my evidence and the apparent bias reflected in your decisions, I contend that several erroneous and unjust findings have been made. These issues are underscored by the serious procedural irregularities detailed above. In light of these concerns, I respectfully request that Your Honour recuse yourself from this case to preserve the appearance and reality of judicial impartiality. The principle of natural justice, enshrined in *R v. Sussex Justices, Ex parte McCarthy* [1924] 1 KB 256, emphasizes that "justice should not only be done but should manifestly and undoubtedly be seen to be done." In this case, the procedural handling has compromised the perception of fairness, making recusal a necessary step to uphold the integrity of the judicial process. I must reiterate, the test for apparent bias, as established in *Porter v. Magill* [2001] UKHL 67, requires that the court consider whether a fair-minded and informed observer would conclude there was a real possibility of bias. The cumulative effect of the procedural irregularities and the misrepresentation of evidence supports a reasonable apprehension of bias in this matter. Given these circumstances, I urge Your Honour to consider the principles of judicial fairness and impartiality and recuse yourself to ensure that justice is administered free from any appearance of prejudice."

28. The document included a number of citations of reported cases. Some citations were correct and appropriate. As subsequently pointed out by the father's counsel at the hearing before us, however, other cases cited were not authority for the propositions for which they were advanced and, in some instances, did not exist at all. At the hearing before us, the mother accepted that she has used artificial intelligence to assist her in preparing the document.

29. On 3 February 2025, in the Family Court at St. Helens, District Judge O'Donohue made an order on the father's first enforcement application number MA24P50130 which had been transferred from Manchester on 29 July 2024. The order was in the following terms:

> "Upon the matter having been transferred to St Helen's Family Court from the Family Court at Manchester.
>
> And upon it appearing to the court that the matter is linked to the mother's [sic] application under MA23P00980 [the number of the father's originating application] but the court not being able to ascertain whether the mother's matter has concluded or not, St Helen's Family Court not having access to the same
>
> And upon Cafcass safeguarding now being out of date
>
> IT IS ORDERED that
>
> (1) Cafcass shall by 4pm on 24 February 2025 file at court updating safeguarding.
>
> (2) This order must be referred to DJ Hatton at Manchester Family Court to consider whether the mother's application under MA23P00980 should also be transferred to St Helen's if still live or alternatively whether the proceedings will need to be disclosed into these if the matter has concluded.
>
> (3) Upon receipt of the Cafcass safeguarding set out at paragraph 1 above and/or the expiry of the deadline for the same to be filed the court shall list the matter in a gatekeeping list on paper for further directions to be given.
>
> (4) This order was made of the court's own initiative and any party affected by its terms may apply to have it set aside, varied or stayed within 7 days of receipt."

30. Three days later, on 6 February 2025, District Judge Hatton made two orders, one in the case number MA25P0009 and the other in case number MA23P00980. The former order was included in the bundle filed for the purposes of this appeal. The latter order was not included in the bundle but was given to us in the course of the hearing. The orders are in almost identical terms save for the case number and the initial sentence. The former order begins: "Before District Judge Hatton in private on 6 February 2025 upon consideration of the court file". The latter order begins: "Before District Judge Hatton in private on 6 February 2025 upon considering the papers and upon considering the mothers [sic] request for recusal".

31. In both versions, the terms of the order provided:

> "(1) District Judge Hatton recuses himself from the case and the matter is no longer reserved to him.
>
> (2) Upon considering re allocation it is noted that the mother and child now reside in St Helens and the case is therefore transferred to the Family Court at St Helens. The mother has made the area she resides in known to the father as can be seen from her C79 application

(3) The hearing listed for 24 February 2024 2025 is vacated and will be relisted together with the case number MA23P00980 [*or* MA25P500009] upon transfer to the Family Court at St Helens."

32. On 11 February 2025, the Cafcass officer filed a report in the Family Court at Manchester. She stated that, although she had spoken to the father, the mother had advised her that she was not comfortable engaging with her before the determination of her appeal. The officer advised that she could find no evidence that the father was a risk to D and recommended a plan for contact. She added that, if the mother did not agree with her proposal, the court should direct the local authority to complete a report under s.37 of the Children Act.

33. On 14 February 2025, the oral renewal hearing of the mother's application for permission to appeal took place at Manchester before Judge Greensmith. The mother attended the hearing but the father did not, the order recording that there was "no requirement or expectation that he would". The judge granted the mother permission to appeal against the district judge's decision, ordered a full transcript of the three-day hearing at public expense, and directed the mother to file various documents. The order further provided that, upon receipt of the transcript, the matter would be referred back to Judge Greensmith for further directions and listing of the appeal. The father's application for a child arrangements order was stayed pending determination of the appeal.

34. On 27 February 2025, the father filed an application seeking an order that the matter remain listed in Manchester and reserved to District Judge Hatton.

35. On 31 March 2025, having "considered the papers in the case", Judge Greensmith made a further order in the following terms:

"Upon the Court having read and considered the transcript of the entire three day hearing before District Judge Hatton

It is ordered that:

(1) Because this Order has been made by the Court without a hearing the appellant may ask for this decision to be reconsidered at an oral hearing pursuant to FPR 30.3(5). Any such request must be filed at the court office within 7 days after service of this order and must be served on the Respondent at the same time.

(2) The findings against which the appellant has leave to appeal against are limited to:

A. 2021-2022 Inappropriate conduct towards [D] on 12 occasions

B. 2021-2023 posting of children's images: failure to [find] this is a welfare concern."

In addition, the order varied the case management directions to the mother to file documents and listed the appeal for 6 May 2025.

36. At the hearing before us, we were informed that no application was made by the mother for reconsideration at an oral hearing of, or permission to appeal against, the order limiting the findings against which she had leave to appeal. When submitting corrections to our draft judgments, however, the mother disclosed a copy of an email she sent to the Family Court at Manchester on 5 April requesting reconsideration of the order of 31 March. Attached to the email was a document called "Grounds for Reconsideration Document" which has not been disclosed to us. The mother also disclosed an email sent in reply by a member of the court staff on 7 April stating that Judge Greensmith had directed that her application for reconsideration of the order limiting the grounds of appeal would be considered as a preliminary matter at the hearing of the appeal. It seems from the copies disclosed to us that neither email was copied to the father's representatives.

37. On 21 July 2025, the hearing of the mother's appeal took place before Judge Greensmith. The mother appeared in person. The father was represented by Ms Linda Sweeney of counsel who at the hearing before the district judge had acted as the father's QLR. At the outset, the mother objected to Ms Sweeney acting as counsel for the father. In the course of making that objection, she referred to her application for the district judge to recuse himself. Judge Greensmith was unaware of that application or the district judge's order, and adjourned to consider the file. When the hearing resumed, there was a discussion in which the judge informed the parties that there was nothing on the file to indicate why the district judge had made the order recusing himself. After further discussion, the judge told the parties:

> "What I am proposing to do, and I want to see what you both think about this, it is that I just get on and hear the appeal. And then, whatever the decision is from that, then I make decisions on how the case moves forward. And I have told you what the options could be … to substitute a different order, or findings … or transfer the case to another judge, who could be myself, for rehearing … Or refuse the appeal and just move forward to welfare."

38. Ms Sweeney then addressed the judge as to the options. She submitted that "the most speedy way to make progress would be for your Honour to hear the appeal", although she reminded the judge that neither she nor the mother had seen the transcript of the hearing before the district judge. The mother then made submissions which the judge summarised as follows:

> "We have a judge who has recused himself having read your submissions, which effectively tell him that throughout the course of the hearing, he was demonstrating bias. Therefore, what you are saying is the whole judgment should be set aside because he has -- there is a real possibility, although we do not know because we do not have his judgment, but there is a real possibility that he has accepted your submissions that he was biased."

In reply, Ms Sweeney submitted that it was "unlikely in the extreme" that the district judge regarded his "very clear and reasoned judgment" as being unsafe. She suggested that he may have decided to transfer the proceedings to St Helens and speculated that his use of the word "recusal" may have been an "inadvertent mistake". The mother then retorted that the recusal "casts serious doubt on the safety of the findings" and should therefore be entirely set aside.

39. Judge Greensmith then adjourned and on return to court after the lunch adjournment delivered a judgment. He started by explaining his reasons for refusing the mother's application for the father's counsel to recuse herself. Under the heading "The Law", he set out FPR rule 30.12(3) and referred to two reported cases. The second case was the decision of this Court in *Re K and G (Care Proceedings: Fact-Finding)* [2025] EWCA Civ 910, which had been handed down three days earlier. The judge made this observation about that judgment:

> "Regarding a judge's ability to frame a fact find judgment in a manner of his choosing I have referred myself to a case reported this morning K and G (Care proceedings: fact-finding) [2025] EWCA Civ 910. In his lead judgment, Lord Justice Baker restates the court's ability to go outside the findings sought and goes further to say the judge is not constrained to deliver the judgment in the format as presented in a schedule or a threshold document."

40. The judge did not address the grounds of appeal for which permission had been granted. Instead, under the heading "The mother's request that DJ Hatton recuse himself (made after the conclusion of the fact find hearing)", he said:

> "19. During this hearing, it became apparent that the District Judge's decision to recuse himself, following the fact find, was the result of a request made by the mother which had been made in a letter, without notice to the father. Whilst this was not included in the allowed grounds for appeal, I decided that it was consistent with the overriding objective to investigate this issue further. Issue was not taken by father's counsel that I should do so."

He stated that the recusal application had been made in a letter rather than a formal application and that it had not been served on the father. He continued:

> "22. To be clear, there is no record of reasons or judgment giving any explanation by the learned district judge as to why he has recused himself; neither does the judge say in the order why he has recused himself. Further, the judge does not say whether he recuses himself from the proceedings or just from the proceedings moving forward. This is significant because of the nature of the allegations made by the mother who in her grounds clearly says that the judge showed bias during the three day fact find which resulted in her not having a fair trial. Unfortunately, there is no way of knowing whether the judge accepted that allegation.

> 23. I have considered whether it would be appropriate to ask DJ Hatton why he recused himself. I note that neither party has asked the judge for clarification of his decision and neither has appealed against the decision to recuse. It is eight months since the decision was made. There is no recording of the judge's reasons and no judgment on file. It seems to me that to make these enquiries at this late stage of a matter which neither party took issue with at the time would lack transparency and may result in procedural unfairness. I have decided not to make any further enquiries of the district judge."

Having referred to the test for recusal in *Porter v Magill* [2001] UKHL 67, he continued:

> "26. Having read the judgment, I cannot see any evidence in the written transcript of any obvious bias on the part of the judge. That is with the benefit of hindsight and my knowing the process and knowing what bias looks like. I cannot see why the judge has recused himself and that is a very unsatisfactory position to be in."

41. Under the heading "The appeal", the judge then set out his decision in the following paragraph:

> "27. Regarding the two grounds of appeal which were initially allowed I have carefully read the transcripts of the hearing, and the judgment. It is not the contents of the transcripts that make the judge's findings unsafe, it is the context in which they were made. The judge has agreed he should recuse himself without saying why and for that reason, I cannot see how the judgment of District Judge Hatton can stand. Looking at the test for appeal, it seems to me that where a judge recuses himself in the face of allegations of bias and fails to give reasons how that bias is established, this amounts to a serious procedural or other irregularity arising from a process that has been adopted which is procedurally irregular and unfair to an extent that it renders the decision unjust. The judge has acted on a request made without the knowledge of the father and has then made a decision without giving reasons with the possible acceptance that he has behaved with bias throughout the three day hearing. This process adopted by the district judge lacks transparency and thereby, fairness. It must follow that any decision arising form that process must be set aside."

42. The judge continued his judgment by addressing the practical effect of his decision and case management. He observed that D had not had contact with his father for "a very significant period of time" and had been involved in court proceedings for most of his life. He made a series of directions which he was confident was "the best way of moving forward". He directed the father to file a further statement setting out his position and reasons for seeking contact, and the mother to file a statement in response. He then

considered whether to hold a "further discrete fact-finding". Having recited principles from recent case law, he concluded:

> "36. Whilst the judgment of the district judge is set aside, the evidence given by the parties is not. The court has the benefit of three days of evidence from which to draw its further deliberations. I have carefully considered the allegations the mother makes and have the benefit of contextualising these into the evidence. I can form my own judgment as to which of the allegations would have sufficient probative value as to be relevant to the father's application, if proved. I will shortly have further statements from the parties to assist me to guide Cafcass in conducting its welfare analysis.
>
> 37. I am satisfied that this matter is capable of being concluded in one final hearing. to enable this, I will hold a case management hearing immediately following the filing of the parents' updated evidence to give further case management directions so that I can give Cafcass judicial steer as to how to approach its welfare evaluation. Meanwhile the matter will be listed for a three day final hearing to ensure no further unnecessary delay is caused."

After the judgment, Ms Sweeney applied for permission to appeal which the judge refused.

43. On the following day, the mother filed a further application asking Judge Greensmith to reconsider his decision to allow Ms Sweeney to continue to represent the father. On 24 July, the father's solicitors filed an application seeking clarification from the district judge as to his reasons for recusing himself. Both applications were listed before Judge Greensmith on 31 July 2025 and dismissed. In a short judgment, he noted in respect of the father's application that no application had been made for permission to appeal against the recusal decision and that "obtaining the reasons at this stage, that is, retrospectively, cannot rectify the fundamental issue causing the judgment to be unsafe and the appeal to be granted. The application has been incorrectly made and is misguided". The judge added that he was dismissing both applications as "totally without merit" and warned the parties that "any further applications dismissed under such terms will result in the court considering making a civil restraint order".

44. Meanwhile, on 28 July, the father had filed notice of appeal to this Court against the decision to set aside the district judge's findings. On 15 August, he was granted permission to file amended grounds of appeal set out as part of the composite grounds set out below.

45. On 8 August, the father's solicitors filed a further notice of appeal in the Family Court at Manchester seeking permission to appeal out of time against the district judge's recusal decision. In the appeal notice, the solicitors referred to the appeal against the order of 21 July and invited the family court to "leapfrog" the appeal to this Court so that both appeals could be heard together.

46. On the same date, the father's solicitors filed a third notice of appeal to the High Court Family Division seeking permission to appeal against Judge Greensmith's order dated

31 July dismissing the father's application for District Judge Hatton to give reasons for his recusal decision, and certifying the application as totally without merit. The solicitors again invited the High Court to "leapfrog" the appeal to this Court to be heard alongside the other appeals.

47. On 8 September, HH Judge Singleton KC, sitting in the Family Court at Manchester, granted the father permission to appeal out of time against the district judge's recusal decision. In giving reasons, she observed that:

> "the father was not given an opportunity to be heard on the recusal, and no reasons for his order were provided by DJ Hatton. The father's need to challenge the recusal by way of appeal arose by reason of the decision of HHJ Greensmith on the mother's appeal on 21st July 2025 to overturn DJ Hatton's factfinding because DJ Hatton had subsequently recused himself. Before then, whilst the father may have regarded the decision as unfortunate, he had no reason to consider that a challenge to that decision was crucial to his case in opposing the mother's appeal against the previous factfinding decision."

Judge Singleton proceeded to transfer the appeal to this Court to provide "an unfettered route to consider the merits of the recusal decision alongside the merits of the appeal against the decision of HHJ Greensmith".

48. On 18 September, Macur LJ granted permission to appeal against Judge Greensmith's order of 21 July. In giving reasons, she observed:

> "the District Judge's unexplained self-recusal is an obvious procedural irregularity. The appellate judge at first instance failed to investigate this issue but relied upon the fact of the unexplained recusal as a procedural irregularity which justified him overturning a judgment which he had hitherto first regarded as a comprehensive and balanced."

49. On 13 October, I directed that the appeal against the district judge's recusal decision, in respect of which permission had been granted by HHJ Singleton, should be listed at the same hearing as the appeal against Judge Greensmith's order of 21 July.

50. On 14 October, Hayden J sitting in the Family Division granted permission to appeal against the order dated 31 July refusing the father's application for the district judge to give reasons for his recusal decision, observing that "in the context of what appears to be considerable procedural muddle and confusion I consider the appeal has a real prospect of success".

The appeals

51. Thus it was that the three appeals, each filed in different courts in accordance with the rules, came before us on 23 October on the following grounds:

(a) Appeal against HHJ Greensmith's decision of 21 July 2025 (second appeal):

(1) HHJ Greensmith failed to properly direct himself on the role of an appellate tribunal in an appeal against findings of fact and in relation to review of recusal decisions, or to apply such directions as he gave himself.

(2) HHJ Greensmith was wrong not to request reasons or information as to why DJ Hatton recused himself.

(3) In circumstances where HHJ Greensmith concluded that the district judge's recusal decision was wrong, it was wrong for him to set aside the fact-finding judgment rather than set aside the recusal decision itself.

(b) Appeal against District Judge Hatton's recusal decision of 6 February 2025

(4) DJ Hatton was wrong to recuse himself on the basis that there is no basis to conclude that a reasonable and informed observer, with knowledge of the material facts, would conclude that there was a real possibility that the DJ was biased.

(5) DJ Hatton was wrong to provide no reasons for his decision or to provide any information for his recusal decision.

(6) DJ Hatton was wrong to recuse himself without providing the parties an opportunity to be heard on the issue.

(c) Appeal against HHJ Greensmith's order of 31 July 2025

(7) HHJ Greensmith was wrong to dismiss the father's application to be provided with reasons for DJ Hatton's recusal decision.

(8) HHJ Greensmith was wrong to mark the father's application as totally without merit.

52. These grounds were supported by clear and succinct submissions by Mr Shaun Spencer KC, leading Ms Helen Crowell and Ms Sweeney. Dealing first with the appeal against the order of 21 July, he submitted that, in determining the mother's appeal against the district judge's findings, the judge conducted no analysis of the two findings upon which permission to appeal had been granted. Instead, he allowed the appeal on a completely different basis of which the father had had no notice. Mr Spencer conceded that it was open to the judge to raise issues of his own motion, but contended that he failed to consider whether procedural steps should be taken to enable a fair and proper evaluation of the issue. Mr Spencer submitted that those steps should have included (a) ascertaining from the district judge his reasons for his recusal, (b) sharing that information with the parties, (c) giving the parties the opportunity to make submissions and/or make applications arising from that information, for example seeking permission to appeal, (d) reaching a decision on any appeal against the recusal, and (e) deciding the appeal against the fact-finding judgment in the light of that decision.

53. In support of the appeal against the recusal decision, Mr Spencer submitted that the mother's application for recusal was, in every respect, an attack on the evidential evaluative exercise undertaken by the District Judge. An objective review of the mother's application reveals no suggestion of apparent bias, within the legal meaning. Neither her letter dated 15 January 2025 nor the Grounds for Recusal document raised

any allegation of facts, relevant to the assertion of apparent bias, outside of the four corners of the fact-finding exercise. The fact that the district judge had dealt with the finding of fact hearing and made findings adverse to the mother, had commented adversely on her as a witness and found her evidence unreliable in parts, did not justify recusal on the basis of apparent bias. Mr Spencer further contended that the procedure adopted by the district judge was unfair and irregular. He had failed to allow the father any opportunity to respond to the application, and made the order without giving any reasons.

54. In reply, the mother, acting in person, submitted a lengthy skeleton argument responding in detail to every paragraph in Mr Spencer's skeleton argument, describing much of it as factually inaccurate or incomplete and misleading. She reiterated many of her complaints and criticisms of the district judge's judgment set out in her "grounds of recusal" document and her original grounds of appeal. The skeleton argument cited a number of authorities. As before, some citations were non-existent cases - for example "*Re M (Paternity: Appeal by Mother)* [2003] EWHC 2832 (Fam)". Other cases were cited in support of a proposition for which they were not authority. For example, *Re B (Children)* [2008] UKHL 35, the well-known decision of the House of Lords on the standard of proof in children's cases, was erroneously cited for the proposition that "the father's conscious choice to ignore correspondence that did not assist his position demonstrates wilful evasion and further undermines his credibility". *Re W (Children)* [2010] UKSC 12, the equally well-known decision on the principles which should guide the exercise of the court's discretion in deciding whether to order a child to attend to give evidence in family proceedings, was cited for the proposition that "findings reached through a procedurally compromised process cannot stand".

55. There was much repetition in the mother's skeleton, but in summary her case on the appeals was as follows.

56. First, she contended that there was no jurisdiction to revisit the district judge's recusal. She submitted that once a judge has recused himself, he becomes *functus officio* and cannot be drawn into post-decision exchanges or compelled to provide reasons. For that reason, Judge Greensmith had been right to dismiss the application for the district judge to give reasons for his recusal. She contended that a request to compel reasons from a recused judge would be inconsistent with the principles of judicial independence and Article 6 ECHR and constitutionally improper. The absence of detailed reasons did not invalidate the recusal; it reflected judicial propriety in withdrawing from a case that had become compromised. The mother argued that the district judge's silence and subsequent recusal amounted to an implicit acceptance that bias—or the appearance of it—had arisen. The fact that he recused himself only confirmed that the concerns underpinning the appeal were well-founded.

57. Secondly, she argued that the district judge's recusal decision was lawfully and properly made "upon considering the papers" and "upon considering the mother's request for recusal". When faced with compelling evidence warranting recusal, there was no obligation on a judge to seek submissions from the opposing party. She added that, in any event, the father was fully aware of her recusal application because she had copied him into her email dated 15 January 2025. He made a conscious decision not to attend the hearing. The mother stated that her detailed "grounds for recusal" demonstrated that the judgment contained misrepresentation, disregarded key evidence, and conflated events, giving rise to a real possibility of bias within the meaning of *Porter v Magill*

[2002] 2 AC 357 and *Re W (Children: Re-opening/Recusal)* [2020] EWCA Civ 1685. In the course of the hearing before us, at the Court's invitation, the mother identified four paragraphs in her "grounds for recusal" on which she particularly relied in support of her argument.

58. Thirdly, the mother contended that a recusal is a protective procedural act, not a finding of fact or an appealable judgment. Once it emerged that the judge who made the findings had recused himself due to concerns raised by the mother, it was both proper and necessary for Judge Greensmith hearing the mother's appeal to consider the effect of that recusal on the integrity of the earlier proceedings. Under FPR 30.12(3)(b), the appellate court must intervene where a decision below was unjust due to serious procedural irregularity. The district judge's recusal, prompted by the mother's submissions, constituted such an irregularity, rendering his prior findings unsafe. The very fact of the recusal, made following the mother's documented concerns, was itself evidence of a serious procedural irregularity. "Once the procedural irregularity became apparent, the integrity of the entire fact-finding process was in question. The judge was therefore entitled … to set aside the judgment as a whole rather than isolate individual findings. His limited permission [i.e. the limited permission to appeal granted by the order of 31 March 2025] was overtaken by the broader jurisdictional defect revealed during [the appeal hearing]."

59. The mother submitted that no weight should be attached to the observation in Judge Greensmith's judgment about finding nothing in the transcript of the evidence to support the assertion of bias. She submitted that the absence of visible bias in the transcript does not negate the existence of bias or procedural unfairness, which may arise from tone, conduct, questioning, or cumulative treatment of a vulnerable witness—factors not fully captured in a written record. She asserted that those factors were identified in her written grounds of recusal submitted to the district judge. In oral submissions, the mother added that the fact that Judge Greensmith observed that he could not see obvious bias was an acknowledgment that bias might have occurred without being fully captured on the transcript.

60. In both her skeleton argument and during her oral submissions, the mother seemed to contend that Judge Greensmith's decision to allow the appeal was based not only on the recusal decision but also on the merits of her grounds for which he had previously granted permission to appeal.

61. The mother therefore argued that reinstating what she described as the district judge's "tainted findings" would be unlawful and lead to further delay which in turn would prejudice D's welfare.

Case law

62. The test for apparent bias involves a well-established two stage process summarised by Leggatt LJ in *Bubbles & Wine Ltd v Lusha* [2018] EWCA Civ 468 at paragraph 17 in these terms:

> "The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real

> possibility that the judge was biased: see *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357, paras 102-103."

63. In *Harb v HRH Prince Abdul Aziz Bin Fahd Bin Abdul Aziz* [2016] EWCA Civ 556, this Court stated (at paragraph 69):

> "the opinion of the notional informed and fair-minded observer is not to be confused with the opinion of the litigant …. [T]he litigant is not the fair-minded observer. He lacks the objectivity which is the hallmark of the fair-minded observer. He is far from dispassionate. Litigation is a stressful and expensive business. Most litigants are likely to oppose anything that they perceive might imperil their prospects of success, even if, when viewed objectively, their perception is not well-founded."

64. In *Locabail (UK) Ltd v Bayfield Properties Ltd* [1999] EWCA Civ 3004, [2000] QB 451, paragraph 25, the Court observed:

> "The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection".

65. In *Re L-B (Children)* [2010] EWCA Civ 1118, Patten LJ said (at paragraph 22):

> "Where a judge is faced with an application that he should recuse himself on the ground of apparent bias it is in my judgment incumbent on him to explain in sufficient detail the scale and content of the professional or other relationship which is challenged on the application. The parties are not in the position of being able to cross-examine the judge about it and he is likely to be the only source of the relevant information. Without this, it becomes difficult if not impossible properly to apply the informed bystander test …"

66. In *Locabail (UK) Ltd v Bayfield Properties Ltd*, supra, this Court stated (at paragraph 19) that "there can, however, be no question of cross-examining or seeking disclosure from the judge". That was said in the context of observations about the process to be followed in cases where the judge's impartiality was impugned by personal interest. It does not undermine the rule of practice that a judge should give reasons, albeit briefly, for any decision to recuse himself.

67. In *Resolution Chemicals Ltd v H Lundbeck A/S* [2013] EWCA Civ 515, [2014] 1 WLR 1943 at paragraph 41, Sir Terence Etherton C, with whom the other members of the Court agreed, set out the approach of an appellate court on an appeal against a recusal decision:

> "The decision made by a judge as to whether or not to accede to an objection based on apparent bias is a multi-factorial decision. It is well established that an appellate court will normally be slow to interfere with a multi-factorial decision made by a

> judge: *Assicurazioni Generali SpA v Arab Insurance Group*, Practice Note [2002] EWCA Civ 1542, [2003] 1 WLR 577, at [16] ff. The same considerations do not apply, however, in the case of a refusal by a judge to disqualify himself or herself for apparent bias. I agree with the comments of Mummery LJ in *AWG Group Ltd v Morrison* [2006] EWCA Civ 6, [2006] 1 WLR 1163 at [20] that, on the issue of disqualification, an appellate court is well able to assume the vantage point of a fair-minded and informed observer with knowledge of the relevant circumstances, and that the appellate court must itself make an assessment of all relevant circumstances and then decide whether there is a real possibility of bias. That approach is entirely appropriate since it is conventional for applications for recusal on the basis of apparent bias to be heard by the very judge in question…."

Having cited Patten LJ's observation in *Re L-B*, the Chancellor added (paragraph 42):

> "It is plainly consistent with the policy underlying Article 6(1) of the Convention and common law principles that, on such an application, the judge should provide to the parties relevant information. Such information, however, should not go beyond what is strictly necessary for a fair adjudication of the recusal application."

68. The appeal in the *Resolution Chemicals* case was against a judge's decision to refuse to recuse himself. The same approach applied on an appeal against a decision to recuse – see *Otkritie International Investment Management Ltd and others v Urumov* [2014] EWCA Civ 1315.

69. In *Re W (Children: Reopening/Recusal)* [2020] EWCA Civ 1685, this Court allowed an appeal against a circuit judge's decision to set aside findings in the following circumstances. The findings had been made by a district judge in private law children proceedings. The father, against whom the findings had been made, applied for a rehearing of one of the findings. The application was listed before a recorder who concluded that it should be heard by the district judge and contacted her over the short adjournment. Having done so, he informed the parties that the district judge had recused herself from the case for what he considered to be good personal reasons. He directed that the father's re-opening application should be listed before a circuit judge. At the start of that hearing, the circuit judge raised the question of the recusal and, after hearing submissions, delivered a judgment in which he set aside all of the findings on the grounds that, in the light of the recusal, "a reasonable observer might question the probity of the findings made". In his judgment giving reasons for allowing the appeal and restoring the findings, with which the rest of the Court agreed, Peter Jackson LJ said (at paragraph 39):

> "It is understandable that the Judge was troubled by this odd position and clear that he was acting with the best of intentions. At the same time, it was necessary for him to approach the matter systematically. The starting point was that the listed application was the father's application to reopen certain findings of fact.

> There had been no regular process of recusal by the District Judge and there was no appeal before the Judge. In these very unusual circumstances, the fact that a party had not appealed was not a bar to the Judge raising the issue himself, but in doing so he needed to acknowledge that a decision to set aside findings on the basis of apparent bias was one that could only be taken in an appellate capacity. Procedural steps could have been taken to achieve this, but the issue was not addressed and it is not clear what capacity the Judge was acting in."

At paragraph 40, he continued:

> "The Judge was not in a position to take a decision about apparent bias: the decision calls for an informed observer, which supposes knowledge of the basic facts. He should have put himself in a position to inform the parties about the District Judge's reasons for wishing to recuse herself so that they were in a position to respond. He instead referred only to the existence of a family connection, which they were in no position to assess. Consequently, they were not only unable to put their case about the district judge's withdrawal but, more seriously, they had no meaningful way of addressing the new and radical proposal to set aside her findings altogether. This process was not fair to either party."

Discussion

70. On any view, the course adopted by District Judge Hatton on 6 February 2025 was irregular. He made the two orders recusing himself without seeking representations from the father. He gave no reasons for his decision. That in itself is a procedural irregularity which would be sufficient to set aside the orders.

71. In my view, however, this Court can go further. The circumstances are sufficiently clear to enable us to make an assessment and decide whether there is a real possibility of bias.

72. Given the recital at the top of the order in proceedings MA23P00980, it can be assumed that the district judge read the mother's letter and grounds for recusal. It does not follow, however, that he accepted her arguments about apparent bias. The order simply said that "District Judge Hatton recuses himself from the case and the matter is no longer reserved to him". As Ms Sweeney suggested to Judge Greensmith in the hearing on 21 July, it is possible that the reason for the district judge's order was simply to lift the provision reserving it to himself. On any view, however, the effect of the order was only to transfer the future conduct of the case to another judge. It had no effect on the past conduct of the case. There is nothing to suggest that the district judge intended that his "recusal" should lead to the findings he had made being set aside. On the contrary, paragraph 3 of the orders provided that "The hearing listed for 24 February 2025 is vacated and will be relisted together with the case number MA23P00980 [*or* MA25P500009] upon transfer to the Family Court at St Helens." The hearing listed on 24 February 2025 was the dispute resolution hearing provided for in the order dated 5 November 2024 following the fact-finding hearing. It can therefore be inferred that the

district judge's intention was that the Family Court at St Helens would proceed with the dispute resolution hearing on the basis of his findings.

73. Had he thought there was any possible merit in the mother's assertions of bias, he would have been bound to take a different course. First, he would have directed the father's representatives to respond to the mother's application. Secondly, in my view he would have been bound to list the application for a hearing. Thirdly, if at the conclusion of the hearing he had accepted the mother's arguments, he would have taken steps to set aside his findings and explained his reasons for doing so. The fact that he took none of those steps, but simply transferred the dispute resolution hearing to another court, is clear evidence that he did not accept the mother's assertions that his findings were tainted by bias.

74. I am satisfied that there is no merit in the mother's assertion of bias. Her grounds for recusal are substantially a challenge to the district judge's analysis of the evidence. She asserts that his mischaracterisation of and errors in analysing the evidence give rise to an appearance of bias. In my view there is nothing in the district judge's judgment to support that assertion. In the course of her oral submissions, the mother identified four passages in the judgment on which she particularly relied. Her criticisms of those passages are, for the most part, challenges to his findings and assertions that he has misunderstood or misrepresented the evidence. Some of the passages cited relate to the two grounds on which Judge Greensmith granted permission to appeal on 31 March. We are not in a position to assess the merits of those grounds. Had the judge proceeded to hear the appeal on those grounds, he may have allowed the mother's appeal. There is, however, no basis on which a fair-minded and informed observer would conclude from reading the judgment that there was a real possibility that the judge was biased.

75. We have not been provided with the transcript of the evidence given before the district judge to assist us in assessing the mother's assertion. Judge Greensmith, however, had been provided with the transcript. Having read it, he confined the appeal against the district judge's findings, for which he had previously given permission, to only two of the grounds raised by the mother. The remainder of the grounds of appeal, which in many respects mirrored the points raised by the mother in her "grounds for recusal" document, were set aside. Then, in his judgment on 21 July, Judge Greensmith said that he could not see any evidence in the written transcript of any obvious bias on the part of the judge, adding that this was "with the benefit of hindsight and my knowing the process and knowing what bias looks like".

76. In circumstances where (1) the process by which the district judge recused himself was irregular in that he failed to allow the father any opportunity to respond to the allegation and failed to give any reasons for his decision, and (2) there is nothing in the judgment or, on Judge Greensmith's assessment, in the transcript of the evidence to support the mother's assertion of apparent bias, I conclude that the father's appeal against the district judge's decision to recuse himself should be allowed on the three grounds advanced on the father's behalf and the orders of 6 February 2025 should be set aside.

77. By itself, that conclusion provides sufficient reason for allowing the father's appeal against the order of 21 July by which Judge Greensmith allowed the appeal against the findings solely on the basis that the district judge had recused himself. But in any event the decision to allow the appeal was flawed for other reasons. I have considerable sympathy for the judge and understand why he said that he found himself in "a very

unsatisfactory position". Furthermore, he was understandably concerned about the delays that had occurred in the proceedings and was anxious to "move the case forward". But in my view the course he took was wrong for the following reasons.

78. The hearing on 21 July was listed for consideration of the appeal on the grounds for which permission to appeal had been granted in the order of 31 March. In the event, those grounds were not addressed at all. The judge determined the appeal on a different basis. As Mr Spencer accepted, once the recusal was drawn to his attention during the hearing, it was open to the judge to address the issue. It was, however, not fair to determine the appeal on a summary basis without ascertaining from the district judge his reasons for his recusal and giving the parties the opportunity to make submissions arising from that information. I do not accept the mother's submission that it would have been improper to make any inquiry of the district judge about his reasons for his recusal because he was *functus officio* or because such an inquiry would have been inconsistent with the principles of judicial independence and Article 6 ECHR and constitutionally improper. On the contrary, the district judge would have been under a duty to respond to such a request as it was, in the words of Patten LJ in *Re L-B*, incumbent on him to explain the reasons for his decision to recuse himself. As Sir Terence Etherton C observed in *Resolution Chemicals Ltd v H Lundbeck A/S*, such an obligation is "consistent with the policy underlying Article 6(1) of the Convention and common law principles".

79. I do not accept the submission which I understood the mother to make that Judge Greensmith's decision to allow the appeal was based not only on the recusal decision but also on the merits of her grounds of appeal. It is plain from the transcript of the hearing and from his judgment that his decision was based solely on the recusal decision and not on any consideration of the two grounds of appeal for which the judge had given permission on 31 March. Although, when granting permission to appeal, he would have been satisfied that there was a real prospect that the appeal would succeed on one or both of those grounds, or that there was some other compelling reason for the appeal to be heard, at no point did he say anything to indicate that the appeal would be allowed on those two substantive grounds.

80. The position in which Judge Greensmith found himself on 21 July was similar to the predicament facing the circuit judge in *Re W (Children: Reopening/Recusal)*. As in that case, it is "understandable that the judge was troubled by this odd position and clear that he was acting with the best of intentions". But, as Peter Jackson LJ observed of the judge in *Re W*, it was "necessary for him to approach the matter systematically". There was no bar to Judge Greensmith considering the issue of the recusal in the context of the appeal but fairness required him to take steps to establish the reasons for the district judge's decision and inform the parties so that they were in a position to respond. Instead, having heard submissions as to whether he should proceed to hear the appeal, the judge returned after the short adjournment and delivered a judgment allowing the appeal. The course he took denied the father a fair opportunity to address the new proposal that the findings be set aside on a wholly different basis from that which he had anticipated. As in *Re W*, the process was not fair to either party.

81. For those reasons I would also allow the appeal against the order of 21 July 2025. But that does not conclude the challenge to the district judge's findings. The grounds of appeal for which permission was granted in the order of 31 March remain outstanding. In fairness to the mother, they must be considered. This Court is in no position to

address them. If my Lords agree, I would therefore remit the appeal to HHJ Singleton KC, the Designated Family Judge for Manchester. Nothing I have said in this judgment should be read as expressing any view about the merits of the two grounds of appeal which will be for Judge Singleton to determine. In addition, having now seen the email exchange drawn to our attention by the mother after receiving our draft judgments, it may be necessary for Judge Singleton to consider the mother's application apparently sent by email on 5 April 2025 for reconsideration of the order dated 31 March 2025 limiting the grounds of appeal.

82. I turn finally to the third appeal, against the order of 31 July 2025. As, if my Lords agree, we will be setting aside the district judge's recusal decision, it is unnecessary at this stage to ask him to give his reasons for that decision. In those circumstances I would propose making no order on the appeal against the judge's dismissal of the application for him to do so. I would, however, set aside the judge's order certifying the father's application as totally without merit.

83. Finally, I return to the issue raised by the father's representatives about the mother's erroneous citation of authority (see in particular paragraph 54 above). I absolve the mother of any intention to mislead the court. Litigants in person are in a difficult position putting forward legal arguments. It is entirely understandable that they should resort to artificial intelligence for help. Used properly and responsibly, artificial intelligence can be of assistance to litigants and lawyers when preparing cases. But it is not an authoritative or infallible body of legal knowledge. There are a growing number of reports of "hallucinations" infecting legal arguments through the citation of cases for propositions for which they are not authority and, in some instances, the citation of cases that do not exist at all. At worst, this may lead to the other parties and the court being misled. In any event, it means that extra time is taken and costs are incurred in cross-checking and correcting the errors. All parties – represented and unrepresented – owe a duty to the court to ensure that cases cited in legal argument are genuine and provide authority for the proposition advanced.

Conclusion

84. I would therefore make the following orders on the three appeals before us.

(1) The appeal against the district judge's decision to recuse himself is allowed and the orders dated 6 February 2025 in proceedings MA23P00980 and MA25P00009 are set aside.

(2) The appeal against the order of 21 July 2025 is allowed. The appeal against the district judge's order dated 5 November 2024 is remitted to HHJ Singleton KC for rehearing on the two grounds for which permission was granted by the order of 31 March 2025, together with determination of the mother's application by email for reconsideration of that order.

(3) There is no order on the appeal against the order of 31 July 2025, save that the certificate that the father's application was totally without merit is set aside.

COBB LJ

85. I agree.

Judgment Approved by the court for handing down.

MILES LJ

86. I also agree.