



Neutral Citation Number: [2020] EWCA Civ 767

Case No: B4/2020/0388

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE FAMILY COURT AT MANCHESTER**  
**HH Judge Allweis**  
**MA19C00413**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 17 June 2020

Before :

**LORD JUSTICE PETER JACKSON**  
**LADY JUSTICE ASPLIN**  
and  
**LORD JUSTICE BAKER**

**IN THE MATTER OF THE CHILDREN ACT 1989**  
**AND IN THE MATTER OF B AND Y (CHILDREN)**

Between :

**A FATHER**  
**- and -**  
**X BOROUGH COUNCIL(1)**  
**A MOTHER (2)**  
**B (3) and Y (4)**  
**(by their children's guardian)**

**Appellant**

**Respondent**

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**Karl Rowley QC and Fiona Holloran** (instructed by **Stephensons Solicitors LLP**) for the  
**Appellant**

**Yvonne Healing** (instructed by **Local Authority Solicitor**) for the **First Respondent**

**Naomi Hobbs** (instructed by **Fountain Solicitors Ltd**) for the **Second Respondent**

**Martine Swinscoe** (instructed by **AFG Law**) for the **Third Respondent**

Hearing date : 20 May 2020  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals

Judiciary website. The date and time for hand down is deemed to be 10:30 on Wednesday 17 June 2020.

## **LORD JUSTICE BAKER :**

1. This is an appeal by a father against a finding that he sexually abused his daughter.
2. At the conclusion of the appeal hearing on 20 May 2020, we informed the parties that the appeal would be dismissed. These judgments set out the reasons for our decision.
3. The children who are the subject of the proceedings are girls – B, now aged rising 11, and Y, aged 5. The children’s father works abroad in Europe during the week, returning to the family home at weekends and during holidays. The family lives in a city the North of England. In January 2019, they moved to another part of the city so that B could attend a primary school with links to a secondary school chosen by the parents for its academic record.
4. Both before and after the move, the children slept in the same bed. It is accepted by the parents that, on occasions, the father got into bed with the children. At other times, both parents got into the children’s bed together.
5. In April 2019, the parent of one of B’s schoolfriends told the head teacher that B had told her daughter that “her dad is very sexual touching her” and that “her mum smacked and shouted at her”. The head teacher spoke to B who made a number of allegations against her parents. The conversation lasted for about 90 minutes. The head teacher took notes but did not make a verbatim record of the allegations. At the fact-finding hearing, asked why she had not made a fuller note, she said that B’s account had been “an outpouring – I just couldn’t keep up – it was the salient points”. At one point, B asked if she could write down what she wanted to say. She wrote:

“I tried to work hard, but there is so much pressure. When my cousin came from Scotland I told her as well and her mum wanted to help but couldn’t and when my dad comes home on Friday in the night he always touches me in the wrong places and both parents hit me when I screw up.”

Asked what she meant by “pressure”, she explained that it was to do with school exams. When asked where her father had touched her, she indicated her waist, lower waist, side of the hips, buttocks, upper thighs and the front of her body. She said that her mother had seen her father get into bed with her but did not stop him. She added that her aunt from Scotland had said she could not help as it was a family matter and she must tell her dad to stop. B said that on one occasion she had tried to run away from home. Asked about her mother’s behaviour, B described how she would hit her if her test marks fell below a certain level.

6. Following this conversation, the head teacher notified the local authority’s children’s services department. Later that day, a police officer and social worker visited the school and spoke to B for about forty minutes in the head teacher’s presence. It was their evidence that B’s account was “all flowing out” without prompting. She told them about the academic pressure she felt under at home. She described how her father would get into bed with her and touch her body. Asked where he touched her, she mentioned her lower back and pointed to her abdomen. She said that sometimes her mother would be in the bed as well but did not seem bothered about what was happening. She said that she had tried to tell her Scottish aunt who had said she couldn’t help and that it was for her parents to sort out.

7. Following this conversation, the local authority decided that the children should be removed from home. The parents agreed that they should be accommodated under s.20 of the Children Act 1989, and on 2 May B and Y moved to a foster home.
8. On 7 May 2019, B took part in an interview conducted under the Achieving Best Evidence procedure. The interview, which lasted about 70 minutes, was conducted by the police officer who had spoken to B at school a week earlier. A video recording of the interview, which lasted about 70 minutes, was taken and made available to the judge. Although this court has not seen the video, we have had the benefit of reading a transcript of the interview.
9. At an early stage in the interview, the officer, in accordance with the guidance, addressed the question whether B understood the difference between truth and lies, although she did so in a way which did not conform with normal practice. The exchange on this issue was as follows:

“Q: So while we are in this room today, what we need to make sure is that everything that we say is the truth, okay?”

B: Yes.

Q: You know that you get told about telling the truth at school, and not telling any lies, and things like that – yes?

B: Oh no, I don't like lying myself, to be honest.

Q: No, no, we don't like it when people tell lies, do we? Because then we can't – we can't look at things properly, can we?

B: Uh-uh.

Q: So, are you happy that, you know that you have to tell the truth, while you're in here?

B: Yes.

Q: Yes?

B: Yes, I'm glad.

Q: Are you okay with that? Yes, are you all right with that?

B: Okay, I would definitely not be all right, if it was 'You have to lie'  
(shakes head).

Q: No, we don't want to tell lies, do we?

B: No.

Q: So everything you tell me, just to make – as long as it's the truth, yes?

B: That's fine (nods).”

10. In the course of the interview, B described her mother's behaviour in significantly different terms from those she had used in the earlier conversations. She said that "Mum would do slight little hits, but it really doesn't hurt." Although the foster carers were "nice", she said that she wanted to go home – "the only place I feel safe and happy is at home". At the same time, however, she continued to describe her father as abusive:

"As for dad, when he's mad, he screams. I think he has anger issues. He punches the chair in a harsh manner. He does things to me emotionally."

11. Later in the interview, the officer introduced the issue of sleeping arrangements at the house. B described how her father would get into her bed. The interview continued:

"Q: So why would your dad get into your bed?"

B: Well, that's what I don't really know.

Q: Okay. So what does he say when he gets in your bed?"

B: He just doesn't say anything. He just gets in.

Q: Okay, and are you in bed?"

B: Yes.

Q: Are you asleep, or are you awake?"

B: Awake, usually.

Q: Okay. So what does he do, when he gets in your bed?"

B: He starts touching me in wrong places.

Q: Okay. Tell me about that.

B: Mmm, like places like – like up here (indicates groin area), and then on my legs, and on my back, and sometimes like, up here, on my hip.

Q: Okay. Does he touch you anywhere else?"

B: Yes, he puts his hand down my pants."

12. In answer to further questions, B said that she wears pyjamas in bed. The interview continued:

"Q: Okay, so you said your dad sometimes puts his hand down your pyjama pants?"

B: Yes.

Q: Yes? Okay and then what does he do?"

B: Just wiggles it about.

Q: Wiggles his hand about?

B: Yes, and squeezes in the places he's touching.

Q: And what places does he touch?

B: Like – he - over here (indicates), down where my hand is, (touches hip) and then legs, and my arms, and up here, on my stomach.

Q: Okay. Does he touch anywhere else?

B: (Shakes head).”

13. B then described what her father was wearing (usually shirt and pyjama bottoms). She said that Y was also in the bed but that her father never touched her. She said that sometimes her mother had been in the bed at the same time but that she did not think her mother had ever seen her father touch her. Later, the officer returned to the subject of where her father had touched her. B referred to her hips, her legs, her thighs, her arms, her stomach and her back. The interview continued:

“Q: What about when he puts his hand down your pyjama trousers? Where does he touch, then?

B: Like here. (Indicates upper hip). On my – on my –

Q: Okay.

B: - disposal place.

Q: Your what, sorry?

B: Disposal spot.

Q: What's that?

B: Hmm, my bottom.

Q: Your bottom? Okay. Your bottom at the front, or your bottom at the back?

B: Back, but he does get close to the bottom front.

Q: Okay, and what does he do, with his hand?

B: He just squeezes.”

A little later, the officer asked:

“Q: Does he ever touch your bottom at the front?

B: Uh-uh (shakes head).

Q: No?

B: Well, there was one time he did.

Q: Okay, when was that?

B: A couple of years ago.”

Having established that B was talking about a time when they had been living at the previous address, the officer continued:

“Q: So tell me about that?

B: And that was slightly, he didn’t squeeze it, he just did it slightly.

Q: Okay, tell me what he did?

B: Just like this (indicates by patting leg). He just patted it, I guess gently.”

14. Later in the interview, B said: “he does the same thing as he does to me, to my mum.” In answer further questions, she described seeing her parents behaving intimately together, apparently when they thought she was asleep. She then described a conversation with her aunt in which she said she had told her what her father had done to her.
15. Towards the end of the interview, B was asked how she would feel about being with her father again, to which she replied, “Okay because he – I know he’ll stop doing it to me.” She added that she missed her mother.
16. On 15 May, the local authority started care proceedings in respect of both girls. In June 2019, the girls moved to live with their maternal grandparents, following a positive assessment and with the court’s approval. They continued to have regular contact with their mother. Initially, B said that she did not want to have contact with her father, but in July she told the children’s guardian that she wanted to see him, and contact between the girls and their father was resumed on a supervised basis.
17. In various conversations over the summer, B made statements which, it was argued on behalf of the parents, amounted to retractions of at least part of her allegations. On one occasion, she said: ‘I guess I exaggerated a bit. Papa just tickled my stomach.’ On another occasion, she said that a friend had encouraged her to exaggerate the allegations towards her parents because they were controlling around schoolwork. On a third occasion, she said “it didn’t happen”, that her friend told her to say something so she wouldn’t have to keep studying so hard, and that she had got the idea about what to say from a movie which other pupils were talking about.
18. In September 2019, the police concluded their investigation and told the father that no charges were to be brought against him as a result of B’s allegations.
19. During this period, a psychological assessment of B was carried out for the purposes of the proceedings. In her report dated 29 November 2019, the psychologist concluded that there was “a significant discrepancy between B’s higher than average academic ability and her relatively poor emotional and social maturity” and suggested that she might be on the autistic spectrum.

20. In the course of the proceedings, the father's lawyers applied for an order that B should give evidence at the fact-finding hearing. On 9 December, following a "*Re W*" hearing, Judge Allweis refused that application. There was no appeal against his decision at that stage.
21. The fact-finding hearing took place over seven days in January and February 2020. Oral evidence was given by, amongst others, the head teacher, the social worker who spoke to B at school, the police officer who spoke to her at school and conducted the ABE interview, the children's aunt from Scotland, and the parents. The parents of the schoolfriend to whom B first spoke about her father's behaviour did not give evidence.
22. In her evidence, the aunt agreed that there had been a conversation with B in which the child had referred to the father touching her. It was the aunt's evidence that she had asked B whether he had touched her "on the bottom or the privates" and B had said no. In his judgment, the judge described the aunt as "not an impressive witness" and accepted that B's account of their conversation to the head teacher and the police was accurate.
23. It was the parents' case that B's allegations were untrue. The mother suggested that B was seeking attention by exaggerating, and letting her imagination run away with itself. She also suggested that the allegations could be explained by the academic pressure on B, or hormonal changes, or conversations with friends, or exposure to such matters at school. In his police interview, the father also said that B had been exposed to conversations about sex at school. He spoke about pressures at school and about B's jealousy of Y. Asked by the police officer whether he understood the offence of intentional sexual touching of a girl aged under nine, the father had said that he thought it was "a subjective thing". In his evidence, he suggested that she may have become confused as a result of sex education lessons. He said that he displays physical affection towards his children – describing himself as a "cuddly, touchy-feely sort of person" – and added that he and girls enjoyed tickling each other. He accepted that he had touched her by squeezing and wiggling his hand as described by B but not her private parts and with no sexual element. He wondered whether B had become uncomfortable with the physical contact between them and whether as she approached puberty she was finding it hard to differentiate between what was right and wrong in sexual matters. He said that it was "a matter of interpretation" and "not black and white".
24. At the outset of his judgment, the judge summarised his findings on a balance of probabilities as follows:
  - (1) that the father had touched B in a sexually inappropriate way;
  - (2) that the mother did not know that this was happening;
  - (3) that the mother was responsible for unreasonable chastisement, "but at the lower end of the spectrum and not enough to justify continued separation from the girls".

He added that the girls could therefore return home to live with their mother so long as the father was absent.



25. At the end of the judgment, the judge set out the reasons for his findings. He described the initial “disclosures” to the head teacher, social worker and police officer as “compelling”. He accepted the submission made on behalf the father that the court had not been provided with direct evidence about the initial conversations between B and her schoolfriend and schoolfriend’s parents, but added (at paragraph 128):

“I am not sure what good would come of subpoenaing the parents and the harsh reality is that it was not realistic for either initially the police or thereafter the local authority well after the event to seek to obtain statements from children as young as [B’s schoolfriends].”

Later, at paragraph 154, he added that he did not consider the court to be seriously disadvantaged by the absence of evidence from the schoolfriends, pointing out that at their age it was unrealistic to expect that they would be able to give a detailed statement or subjected to cross-examination.

26. The judge described the parents’ explanations for B’s allegations of sexual abuse as “not credible”. He reminded himself that the burden of proof was not on the father at any point but concluded that he had not demonstrated any connection between B’s allegations and the factors suggested in his interview and oral evidence. The judge took into account the fact that, at her age, B was likely to overhear discussion of sexual matters at school but concluded that this did not explain the specific allegations she had made against her father:

“It was not characterised by generalisations, as often happens when an adult or indeed a child lies, it was specific. The idea that it was the product of a fertile imagination fuelled by her friend’s encouragement to her to get her own back on her parents for pushing her too hard and/or by hearing talk of some movie she had not ever seen defies belief.”

The judge described the father’s description of his behaviour – that he had touched her by squeezing and wiggling his hand as described by B but not her private parts and with no sexual element – as “very odd indeed”. He disagreed with the father’s comment that it was “a matter of interpretation” and “not black and white”. The judge observed: “all I would say is that it is black and white.”

27. The judge also took into account what he described as B’s “emotional presentation”. He noted that the head teacher described her as anxious and sad. The social worker who spoke to her at school described her as very clear but also “emotive”.
28. It is plain from the judgment, however, that a significant factor in the judge’s conclusion was the account given by B in the ABE interview. He concluded that the interview was of sufficient quality and that B’s allegations against her father were clear and detailed. He rejected a submission on the father’s behalf that there was nothing to suggest that the alleged touching was sexual in nature. He concluded that the language used by the child during the interview “suggests the exact opposite”. He considered her subsequent comments and partial retractions but concluded: “we come back to the point that she has made allegations repeatedly and consistently to professionals both before removal from home and after it”.

29. With regard to the allegations against the mother, the judge was not satisfied on the balance of probabilities that she was aware of the father's sexually inappropriate behaviour. He did not accept that she would knowingly allow such behaviour to take place or condone it. He concluded that the mother did  

“inappropriately react to what she perceived as bad or insufficiently good academic work by hitting; but an angry tap is not on the same level as regular assault .... It was unreasonable chastisement but, in my judgment, at the very bottom end of the spectrum of physical abuse and the very phrase ‘physical abuse’ elevates it or suggests a graver situation than in fact existed.”
30. After judgment was delivered, the hearing was adjourned until the following day. At the resumed hearing, the judge made a final care order in respect of the girls on the basis of a care plan for their rehabilitation with their mother, and supervised contact with the father.
31. On 24 February 2020, the father filed a notice of appeal. The seven grounds of appeal included a ground that the judge had applied the wrong principles during the *Re W* hearing. On 1 April, King LJ granted permission to appeal on four grounds but refused permission on three other grounds (including the ground relating to the *Re W* decision).
32. At the hearing of the appeal, Mr Karl Rowley QC, leading Ms Fiona Halloran who had represented the father before the judge, structured his argument in this way.
33. First, it was argued that the judge failed to address the manifest inconsistencies in the evidence of the child and, by making findings in respect of the allegations against the father and not against the mother, his approach lacked overall consistency and coherence. Mr Rowley drew attention to a number of inconsistencies in B's various accounts to the head teacher, to the police officer and social worker during their conversation at the school, and in the ABE interview. One important difference concerned the parts of the body which the father was said to have touched. Mr Rowley pointed out that it was only during the ABE interview that the child mentioned that he had touched her genital area. Another example was whether or not the mother was aware of the father's behaviour. B told the head teacher that the mother knew about it but didn't seem that bothered. In the ABE interview, she said that she thought that the mother knew but she may not have done. There were also differences in B's various accounts about conversations she had with the schoolfriend and her parents before speaking to the head teacher. There were inconsistencies in B's descriptions of what her father was wearing when he got into bed.
34. Mr Rowley submitted that there were inconsistencies and illogicalities in the judge's assessment of the allegations against the father on the one hand and the mother on the other. In considering the allegations against the father, the judge relied on the child's emotional presentation in her conversations with the head teacher, social worker and police officer as supporting the veracity of the allegations. Mr Rowley observed that the child was presenting in the same way when making allegations about her mother, which the judge subsequently accepted had been exaggerated. He also submitted that, in finding that the mother had not been aware of the father's behaviour, he had overlooked the child's statement to the social worker and police officer that she “didn't seem to be bothered”. It was the father's case that, if the judge had concluded

that allegations against the mother were exaggerated and, in some respects, untrue or inaccurate, it was illogical not to reach the same conclusion about the allegations against the father.

35. Secondly, it was argued that the judge wrongly concluded that the allegations amounted to sexual abuse. It was submitted that there was nothing in the child's description of the father's behaviour which definitively amounted to sexual activity. In reaching his conclusion that the father had behaved in a sexually inappropriate way, the judge failed to give any or any adequate consideration to the fact that the father is a man of good character with no other signs of aberrant sexual interests; that the behaviour was said to have occurred when Y, and sometimes the mother, were also in the bed; and that there was no indication that the father was sexually aroused, nor any evidence of grooming. The only alleged incident which could be interpreted as amounting to sexual abuse was a solitary occasion some years earlier when the father was said to have "tapped" B's genital area. Overall, the father's conduct as alleged by the child was at least as consistent with an innocent explanation. Mr Rowley submitted that there was little consideration of these matters in the judgment. Instead, the judge focused on aspects of the father's evidence about which he had concerns – his description of his behaviour which the judge described as "very odd indeed" and his observation that the interpretation of whether behaviour was sexual was "subjective" and "not black and white", with which the judge disagreed.
36. Thirdly, it was submitted that the judge failed to consider other aspects of the evidence in addition to the matters cited in the previous paragraph. It was argued that he failed to analyse the allegations in light of the totality of the evidence, placed inappropriate weight on the allegations made by the child in her ABE interview and in doing so placed insufficient weight on the repeated attempts by the child to offer an alternative explanation or to retract. Mr Rowley submitted that there were significant gaps in the evidence to which the judge failed to attach any or any sufficient weight. In particular, there was no direct evidence from B's schoolfriend or the schoolfriend's parents to whom B first made the allegations against her father. The absence of this evidence ought to have led the judge to adopt a more cautious approach to B's subsequent accounts because he did not know anything about the earlier conversations which may have moulded the narrative. Furthermore, the treatment of the absence of this evidence at paragraph 154 of the judgment was flawed.
37. It was further argued that the judge's analysis of the child's retractions was inadequate, particularly in the context of the judge's finding that he accepted some of the allegations but not others. There had been several conversations in which the child had clearly retracted elements of her allegations, but there was no verbatim note of any of those conversations, nor was a further interview arranged. In the circumstances, it was wrong to attach significant weight to the child's allegations in the ABE interview.
38. Finally, it was submitted that the judge failed to give sufficient weight to the breaches of the ABE guidelines and the impact that they had on the content and reliability of the evidence. It was argued that there was no proper attempt to establish that the child understood the difference between truth and lies – an omission that was important given the fluctuations in the child's various accounts. Mr Rowley drew attention to a number of leading questions, focusing in particular on the interviewer's introduction

of the subject of the interview by reference to what the child had said in an earlier conversation rather than simply asking what had happened.

39. Despite the characteristically clear and thoughtful exposition of these arguments, they do not, individually or collectively, persuade me that the judge's decision was wrong.
40. The appellant's case is at heart an attack on the judge's assessment of the evidence. It therefore faces the hurdle that the assessment of evidence, and the apportionment of weight to be attached to each piece of evidence, are matters for the judge at first instance. This court does not interfere with findings of fact and evaluations by trial judges unless they are ones which the judge could not reasonably have made.
41. On the alleged inconsistencies in B's accounts, and the various conversations in which she was said to have retracted part of her allegations, it is clear that the judge fully considered all the relevant evidence and submissions, which he analysed at some length in his judgment. He noted the psychologist's evidence that B knew that she had been removed from home as a result of her allegations and that her sense of guilt was an explanation for the repeated retractions. He quoted the following passage from the psychologist's report:

"I believe that B has retracted the allegation because in her own words she really wants to go home. Her motivation is the same whether the original allegations were true or not."
42. It is correct that the judge seems to have accepted to some extent that B had exaggerated her allegations against her mother. That was plainly relevant to the assessment of the veracity of her allegations against the father. For my part, however, I do not see any inconsistency in his conclusions about B's respective allegations against her parents. As Ms Healing reminded us on behalf of the local authority, the judge did make findings against the mother in accordance with some of the allegations made by the child. It did not necessarily follow from the fact that B exaggerated her allegations against her mother that her allegations against father were also exaggerated or untrue. Ultimately, this was a matter for the trial judge to evaluate. Having carried out a thorough and careful analysis of the evidence, he was entitled to conclude as he did.
43. The judge's assessment of the parents' evidence is in my view unassailable in this court. He carefully considered the explanations for B's allegations of sexually inappropriate behaviour suggested on behalf the parents. He reminded himself that the burden of proof remained on the local authority but concluded that none of the parents' explanations accounted for the specific allegations made by the child.
44. As to the alleged gaps in the evidence, it is correct that there was no direct evidence from anyone (except B herself) about the conversations she had with her schoolfriends and the parents of one of those friends. It was therefore necessary for the court to consider the risk that B's accounts of abuse had been contaminated or influenced by those conversations. It is clear from the judgment that the judge took this issue into consideration, although I accept that his explanation (at paragraphs 128 and 154 of his judgment) for disregarding it is not as complete as it could have been. He was, however, plainly aware of the issue when considering the reliability of B's allegations against her father.

45. Conducting interviews of children is a challenging task, even for well-trained and experienced officers. The provisions of the ABE guidance about the conduct of interviews of children are detailed. There are many examples in the reported case law of interviews which have been conducted so poorly that no forensic weight can be attached to anything the child has said. Even in cases where the interview has been conducted largely in accordance with the guidance, it is almost invariably the case that the interviewer occasionally asks a question that, ideally, would have been phrased differently. In this case, for example, the interviewer introduced the question of B's allegations by asking her to say what she had said to the head teacher. Good practice requires that the child be asked to say what happened, rather than to repeat what she has said in an earlier conversation. In some cases, errors of this sort can undermine the forensic value of the interview. Not in this case, however. Reading the interview as a whole, I do not think there is any concern that the child may have been misled by the question into repeating a false account given on an earlier occasion. This was an isolated error by the interviewer. It is true that the subject of "truth and lies" is not covered in the conventional way recommended in the guidance but, as demonstrated in the passage cited above, the officer did emphasise to B that she needed to tell the truth, and B's replies demonstrated that she understood why this was important. Overall, Mr Rowley was unable to identify mistakes in the conduct of the interview on a scale sufficient to call into question the reliability of the process.
46. It is clear from the judgment that the judge considered both the video recording of the ABE interview (which he viewed a number of times) and the written transcript very carefully. He approached his analysis of the material in this way:
- "I think what is appropriate is for the court to look at an ABE interview as a whole (it is part and parcel, of course, of a wider canvas) and consider the matter holistically. The court has to be realistic when looking at a lengthy account - and this is in relation to the submission that B's ABE interview lacked consistency in key details - the court has to be realistic. In a lengthy account repeated thereafter it is too easy to find an inconsistency here or there; it would be surprising if there were a verbatim repetition of events. The question, in my judgment, is - are any inconsistencies significant and material? Do they impact on the whole in a way as to render credibility in doubt?"
47. This approach cannot be faulted. Having carried out the analysis in that way, and considered the contents of the interview in the context of all the other evidence, the judge was entitled to conclude that the statements made by the child during the interview about her father's behaviour were accurate.
48. Finally, there is the issue about the sexual element in the father's behaviour. I do not accept the argument that the judge's failure to refer to various matters identified by Mr Rowley undermined his analysis of this aspect of the case. A number of those matters featured in Ms Holloran's closing written submissions. The judge considered but rejected her submission that there was nothing to suggest that the touching described by the child was sexual. He concluded that the language used by the child suggested that it was. Having considered the transcript of the interview – in particular, the passages cited above – in the context of the totality of the evidence, I think he was entitled to reach that conclusion.
49. For those reasons, I concluded that this appeal should be dismissed.

**ASPLIN LJ**

50. I agree.

**PETER JACKSON LJ**

51. I also agree.