



Neutral Citation Number: [2017] EWFC 95

Case No: SN16C00069

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th July 2017

Before :

THE HONOURABLE MR JUSTICE BAKER

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF A, B, C AND D(CHILDREN)

Between :

A LOCAL AUTHORITY
- and -
A MOTHER (1)
Z (2)
A, B, C AND D (3) to (6)
X (7)

Applicant

Respondents

Ruth Henke QC and Margaret Pine-Coffin (instructed by Local Authority Legal Unit) for the Applicant

Frances Judd QC and Julia Belyavin (instructed by Stone King) for the First Respondent mother

Leslie Samuels QC and Andrew Grime (instructed by Wansboroughs) for the Second Respondent, Z

Deidre Fottrell QC and Louise Mac Lynn (instructed by Royds Withy King) for the Children via their guardian

Charles Hyde QC and Linsey Knowles (instructed by Bevirs) for the Seventh Respondent, X

Hearing dates: 2nd, 3rd, 4th, 5th, 9th, 10th, 11th, 17th, 18th, 19th, 22nd, 23rd and 24th May,

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE BAKER

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MR JUSTICE BAKER :

1. This judgment is delivered at the conclusion of a fact-finding hearing in care proceedings concerning four children referred to in this judgment as A, a boy now aged 13, B, a girl now aged 9, C, a boy now aged 7, and D, a girl aged 15 months. The allegations made by the local authority against the adults responsible for their care include sexual abuse, failure to protect, physical abuse, and neglect.

Background

2. The mother, who is now aged thirty-seven, has had eight children by six different fathers. Her first two children, now aged eighteen and seventeen, have lived with their father since they were small children. Her third child, a girl, E, was born in February 2002 and is therefore now aged fifteen. She lived with her mother until 2016 but then moved to live with her father in circumstances described below. The mother's fourth child, a boy, A, was born in April 2004 and is therefore now aged thirteen. There is no record of his having any direct contact with his natural father who has declined to be involved in these proceedings.
3. In July 2004, the mother married a man who is, in fact, not the father of any of her children. The marriage lasted for only a few weeks and, according to the mother, ended when she discovered that her husband had committed a sexual offence against her niece. Although the mother and her husband then separated, they remain married. In May 2006, following a relationship with another man, the mother gave birth to her fifth child, a boy, F, now aged eleven. Like E, F has had regular contact with his father and is now living with him in circumstances described below.
4. In 2005, the mother met another man, X. They started a relationship and, in August 2007, moved into a home together. At that point, therefore, the household consisted of the mother, X, and three of the mother's children – A, E and F. X remained in the family home for the next seven years. Both he and the mother say that he became the father figure to all of the children and that they shared responsibility for looking after the children. Shortly after moving into the property, however, X began to sexually abuse A and continued doing so for several years. He made video recordings of the acts of abuse on his mobile phone. The fact that he abused A, and the extent of that abuse, which included rape, are not in dispute. What is an issue, however, is whether the mother knew, or ought to have known, about the abuse.
5. In May 2008, the mother gave birth to her sixth child, B, now aged nine. In March 2010, she gave birth to her seventh child, C, now aged seven. X is the father of both of these children. During this period and over the next few years, there were several referrals and complaints made about the family to social services, some from the school and others by anonymous persons. The complaints include allegations of neglect and claims by E that she was being bullied at home. Although various assessments and strategy meetings took place, the local authority took no further action about the family. In May 2012, having carried out a section 47 assessment in respect of E, the local authority identified that further core assessments should be carried out in respect of the other children. It seems that no such assessments were ever completed.

6. In 2012, a teenage boy, W, then aged fifteen, moved into the family household. In his oral evidence, W described meeting X outside the family home when X was working on his car. Subsequently, he visited the house with his father, who lived nearby. Then, after one evening when he had visited the mother and X without his father, he had a row with his own mother who told him to leave. The mother in this case and X offered to put him up. He said in evidence that he intended only to stay for one night but in the event he stayed for several years. Whilst living at the family home, W slept on the sofa or in a spare bed in the boys' bedroom.
7. At some point after W moved in, X started a sexual relationship with him. The fact that a relationship took place is not in dispute, but the date on which it started is not agreed. There is also an issue as to when the mother became aware of the relationship. She says that she was unaware of what was going until she discovered X and W in bed together. X alleges that there was also a sexual relationship between the mother and W. Both the mother and W deny this allegation. Meanwhile, the steady pattern of referrals to social services continued. In particular, the children's schools complained about evidence that the children were neglected and being ill-treated at home. It is now accepted by the local authority that its response to these referrals was inadequate.
8. On 2 September 2014, the local authority and the police were informed by the Child Protection and Online Exploitation Centre that an individual at the family home had uploaded a number of indecent images and videos of children. The police informed social services. On 9 September, X was arrested and a thorough search of the property carried out. During the search, a police officer informed the mother that the police were in possession of intelligence that X had uploaded indecent images of children. She was informed that he would be released from custody later that day on bail but that it would be a condition of his bail that he should have no unsupervised contact with children.
9. On 10 September, a section 47 enquiry was carried out. All of the children were interviewed but they made no allegations of abuse. On the same day, F went to live with his father. Subsequently, a child arrangements order was made in respect of F providing that he should live with his father and have contact with his mother. On 14 September, the mother telephoned the police reporting that she was confused about the terms of the bail conditions and the additional conditions imposed by social services concerning X's contact. The officer in the case telephoned her back and explained these conditions in more detail. The mother subsequently signed a written agreement agreeing that she would not allow X to have contact with the children at home. Inexplicably, that agreement has now been lost and there is no precise evidence of its terms. Although she signed an agreement, however, the mother told social services that she did not regard him as a risk to the children. When the children were visited by a social worker at school on 19 September, A and B said that they missed X, wanted to see him and wanted him to come back home. The local authority made arrangements for contact between X and E, A, B and C. Because of the nature of his alleged offences, he was not allowed to attend a children's centre and thus the local authority arranged for contact to take place at the family home, supervised independently.
10. Despite the terms of the bail conditions, there were repeated reports that X had visited or stayed at the family home. At a home visit on 30 October, the mother denied that X was having any unauthorised contact with the children, and her denial was supported

by all four children and W, who was still living at the property. The mother said that she now accepted that X was a risk. Notwithstanding the mother's assurances, the local authority continued to receive reports that he was visiting the property. On 17 November, the social services and police visited the property together. During this visit, the mother alleged that the previous social worker had told X that he could attend the property as long as the children were not present. She said that she suspected that her neighbours were making malicious and untrue complaints about X visiting the property.

11. On 19 November, social services visited the home of X's father, XX, with whom X was staying, to assess whether XX could supervise contact. According to the local authority, XX said that he understood that he would not be able to leave the children alone in the room with X. He said, however, that he did not think that X posed a risk to the children, adding that social care had "blown all of this out of hand", but he told social services that he would stick to the supervision requirements. Following this visit, a further strategy discussion took place to consider the renewed concerns about X visiting the family home and, in addition, about the conditions at the property which were said to have deteriorated after X's departure. No further action was taken at that stage and for the next few weeks contact continued to take place as before, supervised at the family home. In the period leading up to Christmas 2014, X and the mother made several requests to social services to arrange contact on Christmas Day, but the local authority declined to make such arrangements. At the start of the next school term, however, B produced a piece of writing about her Christmas holidays in which she stated that she had seen her father at her grandmother's house. On 26 January 2015, B told a teaching assistant that she had seen her father the day before.
12. In early 2015, the mother began a relationship with another man, hereafter referred to as Z. At this point, the mother told social services that she no longer agreed that X's contact could take place at the family home. X again suggested his father as a possible contact supervisor. On 16 April, a family group conference took place to discuss contact arrangements and it was agreed that XX would supervise contact at his home with effect from 21 April. After a preliminary visit, social services agreed and thereafter X had contact with the children at his father's home. The local authority now alleges that XX failed to supervise that contact adequately.
13. During the course of 2015, there were ongoing concerns about the children and the state of the family home. In particular, the school were concerned about head lice which were repeatedly seen in B's hair. B also alleged that her mother was ill-treating her, pulling her hair and shouting at her. The local authority continued to receive anonymous calls alleging that X was having unauthorised contact with the children at the family home. As a result, they conducted unannounced visits to the property but on each occasion X was not present.
14. In August 2015, the mother informed social services that she was pregnant with Z's child. In October 2015, the probation service informed the local authority that the mother and the children were staying over at Z's house at a time when his lodger, who was a registered sex offender, was also present. After a further home visit, the mother agreed not to allow the children to come into contact with Z's lodger. During the autumn school term 2015, E, who had become increasingly unsettled at home, made a series of complaints and allegations about her treatment, for example in December 2015 alleging that the mother had shouted at and head-butted her.

15. On 8 February 2016, the police inform social services that they planned to arrest X again following analysis of his telephone. The phone had been seized at the time of his first arrest eighteen months earlier but had not been analysed at that stage, apparently because of the huge demand for technical analysis of electronic equipment in other cases. When X's phone was finally analysed, it was found to contain a large number of images and videos of X sexually abusing A. Another strategy discussion took place leading to another section 47 investigation. The following day, X was arrested again. X's home was searched by the police who seized, amongst other items, a diary belonging to X which disclosed a number of entries about unsupervised and unauthorised contact between him and the children.
16. In an ABE interview in February 2016, E alleged that X had taken photographs of her naked. On 3 March 2016, E went to live with her father. In April 2016, the mother gave birth to her eighth child, a girl, D, now aged fifteen months, of whom Z is the father. The mother remains in a relationship with Z, although he continues to rent a separate flat.
17. On 13 May 2016, X having pleaded guilty to a series of offences including the rape and sexual abuse of A, and the possession of indecent images of a child, was sentenced to 18 years in prison. Shortly afterwards, W revealed that he had also been the victim of sexual abuse by X. Subsequently, W was interviewed by the police and gave full details of the sexual activity with X.
18. On 17 May 2016, the local authority started care proceedings in respect of A, B, C and D. On 24 June the children were removed from the family home under an interim care order, although it was not until 8 July that a contested interim care hearing took place before Recorder Jacklin QC. At the conclusion of the hearing, the recorder found that the safety of the children required that they remain in foster care.
19. Meanwhile, on 9 June, the children's guardian appointed to represent them in the care proceedings had started proceedings in respect of a breach of the children's Article 8 rights, alleging that the local authority had failed to properly investigate the nature of the images downloaded/uploaded by X; had not adequately evaluated the risks of contact between X and the children, and had failed to issue proceedings promptly in February 2016 following X second's arrest when it had become clear that A had suffered sexual abuse. As a result of this further claim, in addition to the care proceedings, the case was transferred to me. Case management hearings took place before me on 19 October 2016 and 6th February 2017, and a fact-finding hearing was listed in May 2017. Following the publication of the judgments in *CZ v Kirklees Council* [2017] EWFC 11 (Cobb J), *H v Northamptonshire CC and another* [2017] EWHC 282 (Fam) (Keehan J) and *Luton BC v PW, MT & SW* [2017] EWHC 450 Fam (Cobb J again), it became clear that the procedure which had been adopted in this case for the pursuit of the children's human rights claim was not in accordance with the rules. In particular, the claim had been made by the children's guardian, when, as Cobb J made clear in the cases cited, the role of the guardian appointed under the Children Act 1989 and in accordance with the Family Procedure Rules 2010 does not extend to representation of children for the purposes of pursuing human rights claims which are made under the Civil Procedure Rules 1998 ("CPR"). Furthermore, such a claim must be made in accordance with the regime established under Part 36 of CPR and is subject to the costs regime under Part 44 of CPR. As I remarked at the next case management hearing on 12 April, the consequence was that the human rights

claim in this case “hit the buffers”. I therefore adjourned that claim, whilst at the same time expressing the view that it should be resolved as quickly as possible (the local authority having indicated that it accepted a substantial proportion of the specific allegations on which reliance had been placed by the guardian when purporting to act for the claimant), and invited the Official Solicitor to consider representing the children in respect of the claim. I further directed that the case should remain in the list before me in May for the purposes of a fact-finding hearing.

20. That hearing duly took place over thirteen days between 2 and 23 May, and at the conclusion of the hearing I reserved judgment until today.

The issues and hearing

21. The findings sought by the local authority are extensively set out in a sixteen-page threshold document. In summary, they are as follows.
22. First, the local authority alleges that X sexually abused A between January 2012 and August 2014 in that on diverse occasions between those dates he (a) caused A to engage in non-penetrative sexual activity with him (b) took indecent photographs of him and (c) sexually assaulted and raped him. It is further alleged that X downloaded and uploaded images of child sexual abuse from and to the internet and posted indecent images and videos of children on the internet. All these allegations are accepted by X, the mother and Z.
23. Secondly, the local authority alleges that, on at least one but probably two occasions X, sexually abused E in the family home. The abuse alleged is that he took photographs of her naked for sexual purposes and in doing so made to feel uncomfortable. It is further alleged that on at least one occasion he attempted to sexually abuse her, trying to remove her trousers, although she fought him off. These allegations are denied by X but accepted by the mother.
24. Thirdly, the local authority asserts that the mother knew that X was abusing A and E and knew that he posed a risk of sexual abuse to all the children in the home. This allegation is denied by the mother. In his response to the threshold document, X states “this is for the mother to comment on”. In support of this allegation, the local authority relies on particular matters considered below. Alternatively, the local authority asserts that the mother ought to have known that X was abusing A and E and thereby posed a risk to the children. Again, the mother denies this allegation.
25. Fourthly, the local authority asserts that it is likely that the other children in the family home knew about the abuse being perpetrated by X and were thereby emotionally and psychologically harmed, or at risk of such harm. In her response to threshold, the mother accepted that E was aware of A being abused and that A was aware of X having attempted to abuse E, that this was harmful for both children and that it was therefore possible that the other children may have been aware of the abuse. It is asserted, however, that, given the children’s ages, they would not necessarily have known or understood what was happening.
26. Fifth, the local authority asserts that the mother and X failed to implement or observe appropriate sexual boundaries in the property and/or have any insight into such boundaries. This allegation, which relates principally to the activities involving W, is

denied by the mother but accepted by X. The local authority relies on a number of particulars in support of this allegation, which are considered below. Linked to this allegation, the local authority also asserts that the mother failed to protect the children in the family home from the inappropriate sexual relationship which X had with W when she knew or ought to have known that this posed sexual risk to the children. The mother does not accept the assertion of failure to protect in this regard.

27. Sixth, the local authority seeks various findings in respect of X's contact with the children after his first arrest in September 2014. It alleges that the mother allowed X to have unauthorised and unsupervised contact with the children on many occasions between September 2014 and February 2016 when he was arrested for the second time. It is the local authority's case that, given the risk of harm the mother knew to be posed by X, she ought not to have allowed such contact to take place. The local authority relies on a number of specific allegations in support of this finding. In particular, the local authority alleges that the mother allowed A, B, and C to stay overnight with X at XX's home when she knew or ought to have known of the risk and further knew or ought to have known that he was effectively unsupervised. The mother denies that she knew X posed a direct risk to the children prior to his second arrest in February 16, but further denies that she allowed any unauthorised or unsupervised contact to take place. She asserts that she relied on the local authority's risk assessment with regard to the suitability of XX to supervise the contact. She accepts that the three children did stay overnight at XX's home but denies that she knew or ought to have known that X would be present in the property overnight. It is her case that she was told and believed that he would be sleeping in his car.
28. Seventh, the local authority asserts that the mother has associated with – and continues to associate with – men who sexually abuse children, notwithstanding her knowledge that they pose a sexual risk. The local authority draws attention to her association at various times with her husband (to whom she remains married, notwithstanding the fact that they separated over a decade ago), X, and also a man called R, who is regarded as a serious risk to children, having been linked to a large number of families for many years, and who has been involved, on and off, with the mother for much of her life. The local authority relies in particular on evidence that R attempted to re-establish contact with the mother following X's departure from the family home and that there has been contact between R and the mother through the internet. It is asserted that the mother does not have sufficient insight into sexually abusive relationships to enable her to protect the children. The mother accepts that she remains married to her husband and is aware of his conviction for sex offences against a child but relies on the fact that she terminated the relationship when she became aware of the allegation against him and has had no contact with him for over ten years. She accepts that she has associated with R and acknowledges that, although he has no criminal convictions, he has been assessed as posing a sexual risk to children. She denies that any of her children have had unsupervised contact with him. She denies that she lacks sufficient insight into sexually abusive relationships so as to prevent her from protecting the children. She adds that she will be willing to undertake further training to help her protect the children in future.
29. On the basis of the specific findings sought in relation to sexual matters as summarised above, the local authority asserts that, had X not been arrested a second time and remanded into custody, the three children, and also D, would have been at

ongoing risk of sexual harm. The mother does not accept that there would be any ongoing risk of this nature.

30. Eighth, the local authority seeks findings in respect of physical harm. It is alleged that X physically harmed the children and/or exposed them to his aggression and cruelty and thereby to a risk of physical harm. It relies on various allegations made by the children between 2008 and 2011, notwithstanding the fact that the local authority at that time did not take significant steps to protect the children. It is asserted that the mother knew about X's behaviour and the risk posed to the children and yet failed to protect them. In her response to threshold, the mother accepts that she was aware of X's aggressive character but denies that this gave rise to any risk of significant harm to the children.
31. Furthermore, the local authority asserts that the mother herself physically harmed the children and/or exposed them to her own violence, aggression and cruelty. These allegations are substantially denied by the mother.
32. Ninth, the local authority seeks a number of findings of neglect. It relies on evidence of chronically poor living conditions for the children in the property; on evidence that, when he arrived in care, A was malodorous and in dirty and ill-fitting clothes; on evidence that the mother failed adequately to treat with B's infestation with head lice; and on evidence that C was sent to school in dirty and inappropriate clothing and on occasions in soiled underwear. All allegations of neglect are denied by the mother. She accepts that B suffered from a head lice problem but asserts that she did what she could to deal with this difficulty, in circumstances where she found that B was allergic to some forms of treatment.
33. Tenth, the local authority alleges that the mother encouraged the children not to tell the truth to professionals about their life in the family home, both when she was living with X and subsequently when she was in a relationship with Z. The mother does not accept that she did anything wrong in this regard.
34. Eleventh, the local authority asserts that the children have been exposed to excessive alcohol consumption and the use of unlawful drugs, namely cannabis, in the family home. This allegation is not accepted by the mother. X accepts that he drank to excess in the home. Z accepts that he smoked cannabis in the garden.
35. Twelfth, and finally, the local authority seeks various findings in respect of Z. It is asserted that, insofar as he was a part of the family from the early months of 2015, he was also culpable for the failure to protect the children from the risk posed by X and others after that date. Z states that he was informed by the mother that A, B and C stayed at XX's home but that X would not be present at the property overnight. It is denied that Z knew or ought to have known that X will be present. The local authority further asserts that Z had concerns about the relationship between X and W but failed to take any steps to intervene. In response, Z states that, whilst he thought that the relationship was strained, he had no reason to believe that there was a sexual relationship, or that any sexual abuse was being perpetrated on W, until W told him about the relationship in 2016. The local authority relies further on the fact that Z has been aggressive in an earlier relationship on an occasion when he was intoxicated and in possession of cannabis. Z accepts this allegation. He accepts further that he has smoked cannabis regularly but asserts that he never smoked it in the family home.

36. In their closing submissions on behalf of the Guardian, Ms Fottrell and Ms Mac Lynn crystallised the four key questions arising in this fact-finding hearing in the following terms:
- (1) the extent and nature of the sexual abuse of the children in the household by X;
 - (2) the extent to which the mother knew or ought to have known about the sexual abuse;
 - (3) the nature and extent of the mother's failure to protect and
 - (4) the extent and the nature of Z's failure to protect the children after he started his relationship with the mother in early 2015.
37. The parties represented at the hearing were the local authority (represented by Ruth Henke QC and Margaret Pine-Coffin), the mother (represented by Frances Judd QC and Julia Belyavin), X (represented by Charles Hyde QC and Linsey Knowles), Z (represented by Leslie Samuels QC and Andrew Grime) and the children (represented by Deirdre Fottrell QC and Louise MacLynn). I am very grateful to all counsel, and to their hard-working instructing solicitors, for their efforts in this case. Oral evidence was given by nineteen witnesses, including various teachers and school staff, M (X's brother), XX, E's father, W, the police officer in the case, social workers, the mother, X and Z. At the conclusion of the hearing, counsel prepared comprehensive written closing submissions covering all aspects of this complex case.

The law

38. The law to be applied in care proceedings concerning allegations of child abuse is well established. I have summarised it in a number of reported cases (for example, *Re JS* [2012] EWHC 1370; *Re AA (Fact Finding Hearing)* [2012] EWHC 2647; and *Re IB and EB (Children)* [2014] EWHC 369) and have those principles, and the authorities from which they are derived, firmly in mind. What follows is a summary of those principles, plus some further comments of particular relevance to this case, derived in part from counsel's submissions.
39. The provisions governing the making of a care order are set out in s.31 of the Children Act 1989 and, in particular, the threshold criteria, in s. 31(2), namely that:
- “at the relevant date, the children were suffering or likely to suffer significant harm, as a result of the care given to the child, or likely to be given to the child, not being what it would be reasonable to expect a parent to give.”
- If the court finds that the threshold set out in that sub-section is crossed, the court then must determine what order to make and, in reaching that decision, the court will apply s.1 of the Children Act, making the child's welfare its paramount consideration.
40. In determining any issues of fact, the burden of proof rests on the local authority. It is the local authority that brings the proceedings and identifies the findings they invite the court to make. The standard of proof is the balance of probabilities; that applies

both when considering whether an act of abuse has occurred and also the identity of the perpetrator of that abuse. If the local authority proves an allegation on the balance of probabilities, this court will treat that fact as established and all future decisions concerning the future of the children will be based on that finding. Equally, if the local authority fails to prove an allegation, this court will disregard the allegation completely.

41. Findings of fact must be based on evidence. Whilst appropriate inferences may be brought on evidence, the court must be careful to distinguish between inference and speculation, which must be avoided. Hearsay evidence is also admissible if relevant and, in cases involving a long family history, it is inevitable that a considerable amount of the evidence adduced will be hearsay. In weighing up such evidence, I bear in mind the important points about hearsay evidence and, in particular, hearsay evidence adduced from local authority files made recently by Sir James Munby P, in *Re A (A Child)* [2015] EWFC 11 and endorsed even more recently by the Court of Appeal in *Re J (A Child)* [2015] EWCA Civ 222.
42. When considering cases of suspected child abuse, the court surveys a wide canvas and must take into account all the evidence and consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-Sloss P observed in *Re T* [2004] EWCA Civ 558:

“Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence, and exercise an overview of the totality of the evidence in order to come to the conclusion of whether the case put forward by the local authority has been made out to the appropriate standard of proof.”
43. The evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and impression it forms of them. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress and the fact that a witness has lied about some matters, does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720).
44. When considering allegations of sexual abuse, it is essential to keep an open mind. This lesson, which dates back at least as far as the Cleveland Inquiry, has been reiterated on many occasions, for example by Wall J in *B v B (Child Abuse: Contact)* [1994] 2 FLR 713 at p 729 and by the Court of Appeal in *TW v A City Council* [2011] EWCA Civ 17.
45. Finally, so far as the law is concerned, I bear in mind the observations of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, at para 50:

“society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will

experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”

The principal witnesses

(1) X

46. In assessing X’s evidence, it is inevitable that the court starts with the fact that he has pleaded guilty to a series of sexual offences of the utmost seriousness involving a young boy, A, over a period of several years, for which he has received a very substantial prison sentence. In addition, he has admitted engaging in a sexual relationship with W over a period of years. This relationship was also incontrovertibly abusive, given W’s age, and the fact that he had been welcomed into the house as a refuge after he fell out with his own mother. As X agreed in evidence, W saw him as a father figure.

47. The court does not have any real explanation or account from X himself about his abusive behaviour towards A. This is principally because X has not given any account of his behaviour. His position is, as he said to the police officers at the start of his interview in February 2016, that he “can’t recall it happening”. This was highlighted in his pre-sentence report, in which the probation officer recorded:

“[X] found it very difficult to verbalise the motivations or the triggers to his offending. His response from the time he was questioned about these offences by the police to his interview for this report is that he cannot remember any of the abuse that took place. He does not deny that the abuse happened and accepts that it has happened but states that he cannot remember it. [X] was challenged on this stating that, given his memory on other aspect of his lifestyle at the time of the offence including the relationship with his partner, it is not conceivable that he would not remember the abuse especially as it appeared to occur on a regular basis over a significant period of time. He admitted that he was ashamed and guilty of his actions and, despite being encouraged to discuss this further in an attempt to ensure the appropriate offending behaviour work can be scheduled, he would not disclose any further details.

“[X] was more engaged in discussing specific reasons why he started using internet chat rooms. He explained to me that he felt isolated in his relationship and [as] if nothing was ever good enough for his partner. He stated she controlled him and his movements which restricted him to the family and preventative socialising with anyone else. He stated on internet chat sites he felt accepted and that other people did not judge him, something he states he had issues with throughout his life. However, when we went on to discuss the child abuse images and how this started, [X] again stated he could not remember. [X] was directly asked whether he had a sexual attraction to children which he very strongly denied.”

48. In his oral evidence, X stood by his assertion that he could not remember anything about the sexual abuse of A, saying in answer to Miss Henke in cross-examination that “I don’t want to remember” and later, in answer to Miss Judd, “I’ve tried my best

to wipe it from my mind”. It is, however, plain that he does recall some details of the offending. He told the probation officer that he had been drinking to excess at the time the offending – 6 to 7 cans of beer and half a bottle to a bottle of vodka every day. Cross-examined by Miss Henke, he was able to say that the abuse of A had started after C was born (i.e. after March 2010) and ended before W came to live at the house (i.e. in 2013). At one point in cross-examination, he said that he had not abused A with anyone in the room. Later, he said that he had photographed A in the presence of other children, and then said that he didn’t know if he had sexually abused A in the presence of the other children, adding “I never thought about it”. He said that he had never abused A in front of the mother, although she may have been in the house. He denied sexually abusing E or photographing her naked. He also denied uploading or trading photographs of A but he said that he had never taken any steps to hide from anyone that he was photographing A in the bath.

49. I do not accept X’s assertion that he cannot remember anything about the sexual abuse he perpetrated on A over a period of over two years. I find that he has deliberately chosen not to speak about it.
50. For several months after leaving the family home, X kept a diary which was discovered by the police when they searched XX’s house after the second arrest. He said that this was the only time in his life that he has kept a diary. The document demonstrates a number of X’s personality traits – his self-obsession, self-pity, aggression, his anger about the mother’s relationship with Z and above all his desperate wish to have contact with his children. Towards the end of the diary, there is a passage headed “This is my goodbye” in which he wrote

“Once I have all my tattoos of my kids and my dad... I’m done with this world and fighting. My kids I know you will be heartbroken for a bit but it will get easier as time goes on....Sorry doesn’t fix it but I really am sorry for messing your life’s up I still can’t believe this has happened I can’t explain please remember none of what’s gone wrong is any of your faults I will always have love you for ever and ever so don’t waste your tears on me....”

In cross-examination, Miss Judd suggested that this was a message for the children. X said it was for whoever found it. Later in the diary, he recorded the mother as having had two men since they split up and that she had had three or four different men during the relationship, adding “what a tart”, and listing the names of the men, including W and Z. He then added: “eight years she’s so-called loved me. I only ever slept with her.” When Miss Judd put it to him that this was not true, he replied “not entirely”. In closing submissions, Miss Judd suggested that the diary demonstrated that X was relentless in pursuing his own agenda not only with respect to the children but also as a way of trying to make others see things from his own point of view.

51. In the pre-sentence report, the probation officer concluded that

“in order to commit such serious offences I would assess that [X] would have had significant cognitive distortions With regards to a risk of harm I would currently assess [X] to pose a high risk of harm specifically to children. The nature of this risk is both sexual harm and emotional harm as a consequence.”

(2) *The mother*

52. When assessing the mother's evidence, I bear in mind the conclusions of the consultant forensic clinical psychologist, Mr Hutchinson, who was asked to carry out a capacity assessment of the mother, including a full cognitive assessment to assess her overall level of functioning. He concluded that she was of average cognitive ability, but presented with dyslexia which had a significant adverse impact upon her reading and writing ability. When required to use her literacy skills or oral skills in circumstances when she feels she is under scrutiny, she becomes more anxious so that her cognitive deficits become more pronounced. She has some difficulty comprehending more complex written language and is unable to follow and comprehend long sentences with more complex words. As a result, particular care was taken to ensure that her oral evidence was taken in circumstances that would not put her at a disadvantage.
53. In the light of these difficulties, the court must exercise caution when assessing her evidence and credibility. Nonetheless, I have reached the clear conclusion that she was not always truthful in the answers she gave to the court. I bear in mind, however, the important principle, articulated in the *Lucas* case, that the fact that a witness has been untruthful about some matters does not mean that all of her evidence is untrue.
54. A further complicating feature in the assessment of the mother's evidence is that it is manifestly clear that she has a fundamental and alarming lack of insight into the effects of her behaviour and the behaviour of others living with her. This is, of course, a matter of fundamental importance when determining one of the major issues arising in these proceedings, namely whether she knew at the time about the abuse which X was perpetrating upon her son.
55. It has been a feature of the mother's adult life that she has had a series of relationships, some short-term, others longer, and has moved, sometimes rapidly, from one relationship to another with little apparent regard for the impact of her behaviour on her children. The most recent example is her relationship with Z, which started only shortly after the end of her relationship with X, and developed very quickly so that Z started staying overnight in the home within a matter of days. This is but the latest example of a pattern of behaviour stretching back over a number of years. In his evidence, X's brother M put it more bluntly, referring to her "track record – eight kids, six dads".
56. I bear in mind Hedley J's warning quoted above that that "society must be willing to tolerate very diverse standards of parenting". Nonetheless it is almost invariably the case that a high turnover of partners moving in and out of the family home will have an impact on the children living there. The number of relationships by itself is therefore a cause for concern. In addition, as Ms Fottrell submitted in closing submissions, central to evaluating the evidence in this case is the mother's wider history of relationships and associations with men who either sexually abuse children or present sexual risk to children. It was Ms Fottrell's submission that, when her failure to protect their own children from X is considered against the backdrop of her own personal history, a picture emerges of someone who is both incapable of recognising sexual risk to children and disinclined to protect them from such risks. Ms Fottrell identified a clear pattern, beginning in early adulthood of the mother, choosing to associate with men who pose a sexual risk to children. She gives as examples (1) the mother's long relationship with the man that she describes as her "foster brother", R, with whom she has maintained a relationship even though she is

aware that professionals regard him as presenting a sexual risk to children; (2) her marriage to a man who sexually assaulted her fifteen-year-old niece and, most obviously, (3) X himself.

57. Ms Fottrell also drew attention to aspects of her background history with other allegations of sexual abuse within the wider family. She submitted that there is a clear pattern of the mother lacking the ability to identify or recognise circumstances when children are at risk of sexual abuse, and of suggesting that child victims of abuse were themselves responsible for what happened to them in some way, for example describing her niece who had been abused by her husband as a “hot girl on her feet”. In her oral evidence, the mother described her niece as having “thrown herself at anyone”, and said that her husband had been a fully grown man who should have said no
58. During her evidence, the mother was extensively cross-examined by Miss Henke about her relationship with R. She acknowledged that R and his partner had started visiting her again, and that his partner had also contacted her via social media. It is plain that the mother has been told of the concerns about R’s sexual abuse of children but it is unclear when she was first told, how much she knows or indeed how much she really understands about the risk he poses. Perhaps the most important aspect of this part of the evidence is that it illustrates that this mother is vulnerable to approaches by paedophiles and lacks insight into the risks they pose to her children. In answer to a question from the court, she said at one point “I really don’t know why R and his partner may have been trying to get friendly with me.”

(3) **W**

59. W was initially a reluctant witness in these proceedings who attended the hearing in answer to a summons. He was interviewed by the police in June 2016 after the history of his relationship with X became known, but provided no written statement to any party in these proceedings. When called to give oral evidence, however, he willingly answered questions from all counsel.
60. Looking at W’s police interview and oral evidence as a whole, there are three particularly striking features. First, he gave a graphic account of his relationship with X. As described by him, X made determined advances towards him which he was unable to resist, leading to regular sexual activity over a period of years in various locations both at the family home and elsewhere. He described X as an intimidating and frightening man who was frequently angry and on occasions violent. Secondly, he spoke in very warm terms about the mother. Although he firmly denied that there had ever been a sexual relationship between them, or that he had ever sat on her knee or flirted with her as described by other witnesses, it was plain from his oral evidence that he had a high opinion of the mother both as a person and as a mother. Cross-examined by Miss Judd, he said: “in my eyes she has done nothing wrong, nothing at all”. Later, when questioned by Mr. Hyde he said he thought she was “a lovely woman”, and in answer to questions from the court he described her as “a brilliant mum”. Thirdly, he had no concerns about the way in which the children were being looked after. He had no criticism of the mother’s care. When questioned about allegations of neglect, for example, or the mother’s treatment of E, he did not endorse the criticisms of the mother. It is also notable that, although he spoke of X as someone

who would lose his temper every day, he did not criticise him as a father figure to the children, describing him at one point as “brilliant” with them.

61. Listening to his evidence, I formed the very clear impression that he was keen to take the mother’s side and anxious not to say anything critical of her. For that reason, his evidence must be treated with caution. As always, however, I bear in mind the *Lucas* principle. The fact that W may not have told the truth about some things does not mean that he has not told the truth about anything.

(4) *M and XX*

62. Finally, I deal briefly with X’s brother and father, M and XX. Both were initially reluctant witnesses. M in particular was plainly aggrieved at being summonsed to court, but in the event answered all the questions put by counsel. He was plainly extremely angry with his brother because his own children had been left unsupervised with X at XX’s house. At one point there was a brief exchange of words between them across the court room. M was bitter in his condemnation of the way X had behaved, not only the abuse of A but also what he perceived as his manipulation and exploitation of their father, XX. He was also contemptuous of the mother and what he described as her “track record” with men. In view of his strong feelings, I have taken particular care when assessing his evidence, but I am satisfied that he was a truthful witness whose evidence I should accept.
63. XX, on the other hand, was a much less reliable witness. He is in his late seventies, frail, vulnerable and at times confused. He did not always understand the questions he was asked in his oral evidence. It was manifestly obvious that he did not have a full understanding of what had happened in this case and was very reluctant to accept that X was guilty of the offences he has committed. He thought it had all been “blown out of hand”. M, who demonstrated fierce loyalty to his father, said that he thought XX has not yet accepted X’s guilt. It was XX’s evidence that he did not know about the child pornography offences when he was asked to supervise contact. He thought – and told M – that the reason for X’s departure from the family home was because his relationship with the mother had broken down. In his evidence, he said that he knew X was subject to bail conditions but did not know what the conditions were, and that although he was asked to supervise contact he did not realise that he was supposed to be in the same room as the children. He said that he supervised contact to the best of his ability but was not able to go upstairs.
64. It is to my mind an incomprehensible dereliction of duty that the local authority approved XX as a contact supervisor.
65. I am not satisfied that XX’s evidence about X’s activities when staying at his house is reliable, partly because he plainly would not be able to supervise contact – for example, if he was sleeping downstairs and X and the children were upstairs – but also because he plainly continues to harbour sympathy towards X.
66. I now turn to consider the evidence relating to the findings sought by the local authority.

Sexual abuse of the children

67. X admits that he sexually abused A over a period of at least two years. The abuse included oral and anal sexual abuse. In addition, he took indecent photographs of A, including photographs of the sexual abuse. The extent of the abuse is reflected in his conviction and 18-year prison sentence.
68. In addition, the local authority asserts that X sexually abused E. E herself alleges that he photographed her naked as she was getting out of the shower when she was aged ten or eleven. E also stated in her police interview that on one occasion X had suggested that, if she allowed him to photograph her naked, he would allow her to wear make up. She also alleged that on one occasion he pulled her towel away. On another occasion, the mother stated that A had told her that he had seen X trying to remove E's trousers although "she put up a fight". X denies the allegations that he sexually abused E
69. There is also some evidence that X may have sexually abused C. On one occasion, C was heard to say at nursery that X had "touched me, that's bad". Subsequently, the mother reported to a child protection conference that C had told her that X had touched him in the bath. Later, however, the mother suggested that C may have been confused and overheard a discussion between her and the social worker about the sexual abuse of A. At one point, A suggested to his foster carer that something may have happened to C. X denies that he sexually abused C.

Did the mother know about X's sexual abuse of A?

70. In support of its allegation that the mother knew that X was abusing A and E and that he posed a risk of sexual abuse to all the children in the family home, the local authority relies on the following matters. First it cites the layout of the property which, as demonstrated in photographs included in the court bundle, is a small three-bedroom house. For a number of years, several internal doors have been missing in the property. There is an open stairwell and no effective soundproofing. At the time when the abuse was taking place, there were five children living in the house. The mother and X shared one bedroom, E and B shared the second bedroom and A, JF and C shared the third. The local authority asserts that the family was together in the property for most of the time, except when the children were at school. The mother and X shared the responsibility for looking after the children and, as stated by the mother in her police statement, were together most of the time. The evidence of the photographs and videos on X's phone indicated that much of the abuse occurred around bath time when, the local authority asserts, the mother and other family members would be present in the property and aware of what was going on. The videos also show A being vocal while he was being abused, protesting about the things that X was trying to do to him. In one video, C's voice can be heard talking in the background while abuse is taking place in the bathroom. It is the local authority's case that the mother was present on one occasion. The evidence relied on in support of this assertion is contained in one video taken by X of A naked in the bath in which A is heard to say "you leave me to do all the clearing up again mum". Finally, the local authority rely on the observation made by E during her ABE interview that it was "kinda obvious" that X was abusing A.
71. The mother accepts that A was sexually abused by X in the family home over a prolonged period of time. She denies, however, that she was aware of the abuse until X's second arrest. She also denies being aware of his downloading of indecent images

of children prior to his first arrest. She also denies knowledge of any abuse of E or of the risk of sexual abuse to the children. She accepts that the family home is relatively small although did not agree in oral evidence that it was “cramped”. Although there was no door to the girls’ bedroom, no door between the kitchen and living room, and an open stairwell, she denies the assertion that the layout of the house was such that anyone in one part of the house would automatically hear suspicious noises elsewhere in the property. She explained that she spent most of her time downstairs in the living room. The television would be on all day, and other televisions would be on upstairs in the various bedrooms. Miss Judd submits that in those circumstances the noise from upstairs would not necessarily have permeated downstairs, or at least not in such a way to have alerted the mother to what was going on. She accepts that she and X shared the responsibility of looking after the children but states that X would have time alone with them by taking one or more of them out, or by offering to care for the children when the mother went out. Although the mother accepts that E described it as “kinda obvious” that X was abusing A, the mother says that it was not obvious to her. She accepted that on one recording A is heard saying “you leave me to do all the clearing up again mum”, but she denies that she was present when this was said. Miss Judd points out that it is impossible to say from the video whether A is looking at someone because his head is not visible when the words are uttered and that it does not follow from the fact that A said those words that the mother was in the room. Miss Judd further points out that this video clip is the only photograph which suggests that the mother might have been present during the abuse, or otherwise been aware that it was going on.

72. In addition to denying actual knowledge of the abuse perpetrated by X on A and E, the mother further denies that she ought to have known that this abuse was taking place, or that he posed a risk to the children living in the home. In cross-examination by Miss Henke, the mother accepted that X was very close to A, and not as close to the other children. X used to buy more stuff for A than he bought for the other children. She said that she had noticed this early on and questioned X about it. He had replied that he just wanted to father A because his dad wasn’t around. The mother said that this behaviour did not make her anxious. She thought that X was “stepping up to be the father figure A never had. The other children used to wind A up because they saw their fathers.” She conceded with hindsight that maybe there were signs she should have seen, but she did not.
73. Cross-examined by Ms Fottrell, the mother said that it had been A who had told her about X photographing E. E herself had never told her. She said that E had been wrong when she told the police that she had told her mother about X taking photographs of her. She accepted, however, that E had told her that she was scared of X. On the mother’s behalf, Miss Judd points out that there is no suggestion from E that the mother had known what X had been doing to her, nor any suggestion that the mother had tried to prevent her from talking to the police about it.
74. Miss Judd relies on the fact that, although he may have been in the house when some of the abuse of A took place, W was unaware of it until A told him after X’s second arrest. In his police interview, W said that X “was the perfect dad figure for the kids”, adding that “if he was doing anything when I moved into the kids [home] then he’s a blooming good actor”. In oral evidence, cross-examined by Miss Judd, he confirmed that he had no idea that he was doing something to A and reiterated that, if he was, he

was a “blooming good actor”. He added that it had been a shock for the children when he was arrested. Answering questions from the court, however, W said that A was X’s favourite amongst the children, that they would play together and go out together in the car.

75. Miss Judd further contends that the mother was palpably distressed at various points during the hearing, and earlier at various meetings, when the abuse of A was being discussed. In addition, the mother was also very angry with X. Miss Judd submits that this was patent during her evidence and was not manufactured, and is thus further evidence that the mother was unaware of the abuse at the time.

Sexual boundaries

76. The principal evidence on which the local authority relies in support of its allegation that the mother and X failed to implement or observe appropriate sexual boundaries, and/or have any insight into the reason for such boundaries, concerns their treatment of W. There are a number of issues between the parties on this aspect of the case, in particular whether the mother was aware of the relationship between X and W, the significance and extent of “play fighting” that took place between the three adults, and whether there was a sexual relationship between W and the mother.
77. The local authority relies on the fact that, when he arrived at the property, W was a vulnerable fifteen-year-old boy who sought refuge there after being thrown out of his home by his own mother. As is clear from W’s own evidence, he came to regard the mother in this case as a substitute mother figure and X as a father figure. The local authority asserts that X abused W’s trust and established a sexual relationship with him. For a period of years, sexual activity took place regularly between X and W in the property and elsewhere, at various times of the day. Again, the evidence in support of this is found in W’s own evidence, both in his interview with the police and his oral evidence before this court.
78. The mother’s case is that she was unaware of the sexual activity between X and W until she discovered them engaging in sexual activity in bed together. The local authority, however, alleges that the mother’s knowledge of what was going on went much further and asserts that she was also involved in sexual activity with W. Reliance is placed on an assertion in X’s own police interview, repeated in his oral evidence, that the three of them engaged in a “threesome” and that the mother had a sexual relationship with W on other occasions. The local authority also relies on the regular “play fighting” activity that took place between the three individuals in the property.

The mother’s knowledge about the relationship between X and W

79. In her response to threshold, the mother accepts that W was fifteen years old when he came to live in the family home and that he regarded her as a substitute mother figure and saw X as a father figure. She accepts that there was a sexual relationship between X and W but in her response to threshold described this as “consensual”. She accepts that X and W used to “play fight” in her presence but denied that she was or should have been aware that it was harmful or abusive. She denies having a sexual relationship herself with W and in particular denies taking part in a “threesome” as alleged.

80. It was the evidence of the mother and W that she knew nothing about the sexual activity between X and W until one evening when she found them in the bedroom together. The mother and W each gave some detailed evidence about this incident, although in some respects their evidence was inconsistent – in particular, about what had happened after the incident. In her statement, the mother alleged that she had spoken to W about it and asked if he was ok about it. Her statement continued;

“X and W both agreed that it was a consensual relationship. I told W that if X was making him do something he was not happy with then he should report it to the college or the police. Although I was shocked, I didn’t think I could take the matter any further because W was 16 and seemed happy with things. There was no sign that he was being forced. As I no longer wanted to be in a relationship with X I did ask him to leave the house at that point, however he said the tenancy was a joint tenancy and that he was not prepared to leave. I did not think that there was anything I could do about it and I knew that the children would be devastated if he left. I therefore tried to carry on as normal.”

81. In oral evidence, the mother confirmed her allegation that she had found X and W in bed together. She said that this happened shortly before X’s first arrest. She said: “when I found them in bed together, I had my suspicions that X was bisexual but he flatly denied it. After he was arrested, he admitted it.” The mother accepted that she had only told the police about finding them in bed together after X’s second arrest. She said that it was only after X’s second arrest that W had told her that X had abused him. It seems, however, that the mother did not tell any professional about W’s revelation until after W himself was interviewed by the police.

82. In his evidence, W agreed that the mother had found him in bed with X on one occasion. He provided some detail during his evidence, of how he came to be in the bedroom, what he and X were wearing, and where they were when the mother entered the room. Initially, W said that he and the mother only spoke about it after he told Z about his relationship with X, following X’s second arrest. When he was shown the passage from the mother’s statement quoted above, he said that he now remembered that she had asked him if he was OK with it and that he had said he was. He added:

“I thought that if I said I wasn’t happy there would be confrontation between her and X and I might get hurt. I remember her saying that if I wasn’t happy I could go to the police. I agree that I gave the impression that I was happy. I have only just remembered. I remember her asking X to leave the house. I don’t know if it was because of our relationship. I knew she asked him to leave. I told her it was consensual because I knew by the sheer size of X of the damage he could cause me if I told her he’d forced me.”

In answer to questions from the court, W said that the first time he told the mother that X had touched him when he hadn’t wanted it was after he had spent the night with X at XX’s house. He said he felt able to tell her because X was no longer around and he felt safe. He accepted that when he was interviewed by the police he did not tell them about the occasion when the mother had walked into the room when he was in bed with X.

83. In his evidence, M described how the mother had told him that she had found X and W in bed touching each other. M asked rhetorically in evidence why, having seen

that, the mother had continued to have W in the house and not told social services what she had seen.

84. In his evidence, X denied that the mother had ever found him in bed with W. Cross-examined by Miss Judd, he said that “their stories don’t match – I know she didn’t”.

Play fighting

85. In her evidence, the mother was questioned extensively about the “play fighting” that took place in the property. She said that it took place in the living room, and would involve X, W and herself. She presented herself as being reluctant to participate and disapproving of the activity. She said that she tried to stop it “because my house started getting smashed up”. She said that X would start it “pretty much every day”, throughout the period W was living in the house until X’s first arrest. X would start it in the evening after the children had gone to bed, grabbing hold of W and taking him to the ground forcefully. It would then go on for the rest of the evening until bedtime. She tried to stop it, telling them “you’re supposed to be adults”. She disagreed with Miss Henke’s suggestion that the children would have been bound to hear the play fighting going on. Sometimes, she and W would play fight. On these occasions, W would hurt her so that she would have bruises. He would tickle her ribs. She said that the children did not witness this, adding “because my kids didn’t need to see things like that”. Later in her evidence, the mother accepted that she did think there was something wrong in the play fighting because W had feelings for her. She said she tried to stop it. Cross-examined by Ms Fottrell, she described how she had pinned W to the ground to make him stop play fighting. She said, however, that she did not consider play fighting to be a sexualised activity but rather “a childish game”.
86. In his evidence, W agreed that there had been play fighting, usually between himself and X. Occasionally the mother would complain if it got out of hand when ornaments were damaged. In contrast to the mother’s account, W said in evidence (cross-examined by Mr. Samuels) that he engaged in play fighting with the mother very rarely – “once in a blue moon – once every three months”. He said that she would pin him down and tickle him. He said it was “just having a laugh”. Cross-examined by Ms Fottrell, W said that the play fighting had come to an end when Z objected. Z had told W that, with rumours going round about W and the mother, the play fighting was not exactly going to help, and W had agreed that he had a point.
87. There is evidence that play fighting was a feature of the household before W arrived. In 2008, E told her head teacher that her mother and X play fight at home and that she didn’t like it. Subsequently the mother told the head teacher that the family “play fights” but E did not like it.

The mother’s relationship with W

88. An insight into the relationship between the mother and W came from the evidence of M. He described how W would sit on her knee, and she on his knee. He described W as being “like a shadow” around the mother. She couldn’t go anywhere without him. He thought W was still a child but added “the way they were sitting didn’t look like mother and child – he never left her side”.

89. The mother was cross-examined extensively about her relationship with W. She accepted that W had seen her as a mother figure. She emphatically denied that she ever had been a sexual relationship with W. She accepted, however, that, on one occasion before he moved into the property, there had been a game of “spin the bottle” in which she had been dared to kiss W, which she said she had refused to do, and he had subsequently kissed her on the cheek. She said that W had been “quite flirty” towards her at times. She added:

“he told me he liked me and wished things could go further, and things like that. He wanted me to get with him. After X was arrested, he wanted the relationship. He told me when he first moved in that he fancied me and I told him not to be so stupid, it wasn’t going to happen, and as soon as X was arrested he wanted something to happen.”

The mother denied that the play fighting led to a “threesome”. She accepted that W’s mother and father thought that she was having a relationship with their son but insisted it was not true. Cross-examined by Mr Hyde on behalf of X, she denied ever putting her arms around W. She said that she was not flattered by W flirting with her and denied X’s allegation that she had had sex with W on a number of occasions.

90. In his evidence, W denied that he had ever had a sexual relationship with the mother. He was aware of rumours in the neighbourhood that they were having a relationship, and indeed that the mother had become pregnant by him. He said that these rumours had been started by his own mother and that as a result of the rumours his father had disowned him. He said that, on one occasion after his first arrest, X had asked him if he was having a relationship with the mother, and he had replied straight away “no”. Answering questions from the court, he said that X had asked this after they had spent the night together at XX’s house. He denied sitting on the mother’s knee as alleged by M or that she had had her arms round him. He would not agree that he was like a shadow to the mother. Cross-examined by Mr. Hyde, he did accept that he had had a crush on the mother when he was younger, and that this continued when he moved into the house, but denied that he had tried to kiss or touch her. He said that he wouldn’t have allowed her to do anything to him if she had made any advances, adding “I thought she was a lovely woman”. Cross-examined by Ms Fottrell, he said that he didn’t think it would have been obvious to the mother that he had a crush on her, although later he admitted that the mother had asked him and he agreed that he did. He accepted that they had played spin the bottle the day before he moved into the house, in which he had been dared to kiss the mother and had given her “a peck on the cheek”. He denied, however, that after he had moved in he had flirted with her.

Unauthorised and unsupervised contact

91. As stated above, the local authority seeks various findings in respect of X’s contact with the children after his first arrest in September 2014. It alleges that the mother allowed X to have unauthorised and unsupervised contact with the children on many occasions between September 2014 and February 2016 when he was arrested for the second time. It is the local authority’s case that, given the risk of harm the mother knew to be posed by X, she ought not to have allowed such contact to take place.
92. The local authority asserts that the mother knew very shortly after X’s first arrest that he was not to have any unauthorised or unsupervised contact with the children. Such

contact was in breach of his bail conditions and also the written agreement entered into with the social services department that he would leave the family home and not have unsupervised contact with the children. In the early months, it was further stipulated that all contact must be professionally supervised. The local authority relies on evidence of several conversations between the mother on the one hand and police and social workers on the other as to the terms on which such contact had to take place. It is clear that she was present on the morning of the arrest and told by the officer of the stark fact that X was considered to pose a sexual risk to children. The police officer who give evidence at the hearing stated that he returned to the property later that day and explained the risk to the mother again. A few days later, a new social worker visited the property to introduce herself to the mother. When the mother sought to minimise X's activity – asserting that he had told her that he had opened some inappropriate videos and closed them as soon as he realised what they were – the social worker challenged the mother and said that he had also uploaded images from the internet onto his computer. Subsequently, the social workers and police visited the mother on several occasions, updating her as to the investigation and reiterating the message about the risk. In November 2014, following anonymous referrals that the children were having unsupervised contact with X at the home, a social worker visited and repeated the warning to the mother that she was not to allow X to have contact with the children outside the local authority arrangements.

93. In her response to threshold, the mother denies that she allowed unauthorised or unsupervised contact between X and the children. She asserts that she complied with the terms of the bail conditions and the agreement with social services. No copy of that agreement has been produced, but to the best of her recollection it provided that X should leave the home and not have unsupervised contact with the children. It is her understanding that there was no requirement for X not to come to the home when the children were not present. The mother accepts that the initial arrangement was that contact was to be professionally supervised and asserts that she complied with this requirement.
94. The mother was cross-examined extensively about this aspect of the case in oral evidence. She stood by her position that the written agreement provided that she should ensure that X did not reside in the family home or have unsupervised contact with the children. She insisted that after the first arrest X had never had unsupervised contact at the family home. She agreed that it was clear that he could only have contact on a supervised basis. She said that she knew there was not supposed to be any other contact and that she stuck to that agreement.
95. From April 2015, the local authority permitted contact to take place under XX's supervision, including at his home. The mother asserts that she understood that he had been assessed by the local authority as able to undertake this task and on her behalf it is submitted that she was entitled to rely on this assessment. The mother denies that she knew or ought to have known that X would be present at XX's property when the children stayed overnight. It is her case that she was told, and believed, that X would be sleeping in his car. X accepts that some of the children stayed at XX's house occasionally when he was living there after being required to leave the family home. He accepts that he and A (but not the other children) would sleep in the same bedroom. He denies, however, sharing a bed with A or that there was any sexual activity between them there. He says that he slept on the floor. In his evidence, M said

that X visited the children at XX's house on numerous occasions; that the children would sleep there at the same time as X; that the children and X would be upstairs in the property at the same time; that the mother did not stay but visited XX's house when the children were there at the same time as X and never expressed concern; and that X would take the mother and the children back to the family home in his car.

96. It is plain from XX's evidence that he slept downstairs at the property while X and the children slept upstairs with X and A sharing a bedroom, and that X did not sleep in the car as originally indicated. XX said that the mother was ok with the arrangements, although, cross-examined by Miss Judd, he said that as far as he knew the mother thought that X was sleeping in the car, although in later answers he said that she was ok with the arrangements. It was manifestly clear from XX's evidence that he was totally incapable of supervising contact at his home or indeed anywhere. He suffers from ill-health, has difficulty getting upstairs, and sleeps downstairs, so was unaware of what was going on upstairs when X was sharing a bedroom with the children, or on one occasion with W.
97. On behalf of the guardian, Ms Fottrell submits that the mother's argument that, because of the failure of professionals to explain the risk to her she did not know or understand the nature of the threat posed by X after the first arrest, is self-justifying and does not withstand close scrutiny. Ms Fottrell submits that the mother's narrative that she was simply following the advice of the local authority when she agreed to contact between the children and X is put forward as an excuse or explanation for her own lack of action or vigilance in respect of that contact; masks her personal responsibility for breaching the supervision agreements; obscures the fact that she did not investigate whether contact was properly supervised, allows her to abdicate responsibility for her own actions and is a blanket explanation for deceiving the local authority, the police and the court as to the frequency and duration of overnight contact between X and children.
98. Ms Fottrell draws attention to evidence that the mother was extremely reluctant to break off the relationship with X after the first arrest. A week after the first arrest, she was recorded as saying that although she was angry with him she still loved him and was not ready to give up on their relationship. A further week later she was recorded as saying that she and X were spending time decorating the children's bedrooms. At the end of October there was an allegation that she spoke of having "date nights" with X. At Christmas 2014, she pressed for the father to be allowed additional contact on Christmas Day. Ms Fottrell submits that it was the mother who promoted the suggestion of XX as a contact supervisor when it should have been painfully obvious to the mother that XX could not perform the most basic supervision of any activity upstairs in the home. Ms Fottrell acknowledges that there is a real issue as to the failure of the local authority to protect the children but submits that that failure must be viewed separately from that of the mother and did not cause the mother's own failure to protect her children.

Physical harm and violence

99. There is considerable evidence that X was a man with an unpredictable and aggressive temper. It is the local authority's case that on occasions he committed acts of physical violence upon the adults and children in the home.

100. In his oral evidence, M described his brother as having a bad temper and said he had seen him smash his car with anything to hand; smash windows; and drive his car into a wall after an argument. In her oral evidence, the mother described how X had a violent temper and had been violent and abusive to her. She agreed that, if he was angry, the whole house would know about it. Sometimes he would storm out and smash things, for example his car. She said that she was petrified of this behaviour and tried to shield the children as much as she could. He could turn angry at any point. She said: “I think we all lived in fear”, and “we all felt we were walking on egg shells”. She described how she had been grabbed by the throat on one occasion and that the children knew that he had been violent to her. She agreed that he was verbally abusive every couple of days. She denied, however, that he was physically violent to the children. She did not recall him ever hitting E, as the child herself alleged. She conceded that she maybe should have done more to protect the children, but added that X kept saying that he was going to the doctor to book himself into anger management therapy. Ultimately, however, she said: “looking back it probably wasn’t enough. I should have been a lot more forceful and made him leave the house. Maybe I should have told the school.”
101. In his evidence, W described X as “brilliant” with the children. But he also spoke in detailed terms of X’s temper. He said that his fuse was shorter than anyone else’s he had ever met. He would lose his temper, go to his car and drive off. On one occasion, he punched W’s jaw when he was reluctant to go out with him, and on another occasion he had intervened in an argument between W and the mother and pushed W against the wall. W said that, on a good day, X would lose his temper once, but on other days he would be in a bad mood all day and would take it out on everyone, including the children. He said you didn’t know how to take him – he was like a see-saw. He could be physically aggressive, frightening – a very intimidating person. It was only after X’s second arrest that W told someone – in fact, Z – about his abuse at the hands of X.
102. The local authority relies on complaints made by E at school at various times between 2008 and 2011 – specifically in October 2008 and again in March 2009 and September 2011 – that X had been violent to her. In October 2008, E is recorded as saying; “if I’m naughty my dad hits me. He hurts me. He picks me up and throws me on the settee and punches my arm. He isn’t playing he hurts me. I don’t think he loves me. He doesn’t like it when my real daddy comes.” In 2009 E alleged at school that X had hit her with a hairbrush. In 2011 she alleged that he had grabbed her, slapped her on the head, lifted her up and dropped her on the sofa.
103. The local authority further relies on allegations that the mother had herself been physically and emotionally abusive to the children. It relies, for example, on allegations made by E that she had been hit by the mother. For example, it is alleged that, in about late November 2015, the mother had head-butted E and grabbed her arms dragging her around the home. It is further alleged that on a number of occasions, E was shut out of the family home. Reliance is also based on allegations that the mother has been aggressive towards B – for example in around February 2015 when it is said that she combed her hair too harshly and thereby hurt her. The local authority draws attention to a number of occasions in 2015 when B was apparently frightened of her mother and reluctant to return home at the end of the school day.

104. X accepts that he has a temper, but denies the allegations that he was violent to E. On his behalf, Mr. Hyde identified a correlation between the allegations and difficulties in E's contact with her own father. He points out that the local authority investigated the allegations when they were made and concluded they were unsubstantiated. He also points out that E made no allegation against X of physical abuse and/or chastisement in her ABE interview, and that none of the other children has made any such allegation. He also draws attention to W's evidence that X was "brilliant" with the children and "when he lost his temper he would take it out on everyone except the kids".
105. The mother denies the allegations that she herself was ever violent towards the children. She denied E's allegations in her police interview. She said that, after X left, E had changed into a girl that she did not recognise and could not get through to. She thought E had turned against because of X leaving the property. She denied losing her temper with E and specifically denied E's allegations that she had shouted at her, or dug her nails into her arm, or punched, kicked or head-butted her. She admitted that she had given her a slap, but denied that it had been really hard. Save for that incident, the mother denies that she ever hit the children. Although she admits shouting at the children on occasions, she denies that any of the children were frightened of her.
106. In closing submissions, Miss Judd points to an element of uncertainty as to what it was that E actually alleged had happened. It seemed at one point that E was claiming that the mother had physically headbutted her, but it transpired that she was referring to an incident in which the mother had brought her head close to E's head without actually touching it. Miss Judd further contended that there was also uncertainty about an allegation that E had been shut out of the house. Miss Judd also pointed out that none of the children had been interviewed in accordance with the Achieving Best Evidence guidelines in respect of these allegations of violence by the mother. Most of E's allegations are now several years old. The local authority investigated at the time and concluded there was no need for statutory intervention. Miss Judd therefore submits that the evidence in support of the allegation that the mother was ever violent to children (save in respect of the admitted slap) is thin and insufficient to justify a finding.

Neglect

107. The local authority accepts that the allegations of neglect could be lost, given the gravity of the other allegations arising in this case, but Miss Henke stresses that the allegations of neglect are important because they provide a window into the everyday lives of the children in the family home. She describes the evidence of neglectful care in this case as overwhelming. The family home was in poor condition for a number of years, with several internal doors missing, as is evidence from the photographs provided for this hearing, and accumulated rubbish piled in the garden for a number of years. Attempts to persuade the mother to clear the garden were met with a number of excuses. X's brother M described the house in his oral evidence as "a flipping tip". Conditions in the home were compounded by the large number of people living there. When W moved in to the property in August 2012, there were eight people living in the three-bedroom property.
108. The court was presented with a considerable amount of evidence about B's problem with head lice. On behalf the local authority, Miss Henke acknowledges that it is

common for children of school age to have head lice at one stage or another, but contends that for B this was distressing and prolonged. The court heard evidence from a schoolteacher about the many occasions when B came to school with a large volume of nits plainly visible. Furthermore, it is clear from the evidence of the teachers, which I accept, that B found this acutely distressing, on occasions hiding under the table and refusing to go home because people were saying she had nits. M described how his own daughter had caught head-lice from B. A further acute problem for the school was C's soiling difficulties, which continued for several months, and culminated in at least one occasion when he arrived at school on a Monday wearing underpants which he had soiled the previous week and which had apparently been unchanged over the weekend. Overall, the local authority asserts that the lack of care of the children lasted until they were ultimately taken into the care of the local authority in June 2016. At that point, the older three children were noted to be malodorous and wearing ill-fitting clothes.

109. In response, the mother through Miss Judd accepted that the children's care was, at times, below that which should have been provided. Miss Judd submits, however, that the severity of these concerns was not of the persistent and serious nature so as to justify removing the children on that basis alone. In assessing the evidence of neglect, Miss Judd invited the court to consider the evidence of the many witnesses who had spoken of the fact that the children are delightful and well-behaved. There were no reports of difficult behaviour in foster care or at school. Miss Judd submits that these positive features must be attributable to the care received from their mother.
110. So far as the head lice problem is concerned, Miss Judd points out that this problem only affected B, and not E or A, both of whom attended the same school, and was attributable at least in part to the problems of B's allergic reaction to some of the treatments. She adds that the evidence from the school suggests that the problem had largely abated by the summer of 2015. By the time of the child protection case conference in May 2016, shortly before the children were taken into care, it was reported that B's presentation at school had improved. Cross-examined by Miss Judd, B's schoolteacher AE conceded that cleanliness in general was not a significant issue for B. It is accepted on behalf the mother that C had an issue with soiling, but it is pointed out that the evidence suggests that this occurred over a relatively limited period, after X left the family home, when the mother was likely to have struggled to care for the children by herself. It is the mother's case that by early 2016 the home conditions in the property had improved, a point confirmed by M in cross-examination. In her evidence, the mother accepted that there had been complaints about the state of the garden because of the amount of rubbish there, but added that she had eventually cleared the garden after X's first arrest.
111. In his oral evidence, W stated that the house was always clean, that the children were not unwashed or dirty, that whenever C had an accident he would always get cleaned up.

Suppression

112. The local authority schedule of findings includes a number of particular allegations to the effect that the mother sought to suppress the truth about what had been happening, in particular by telling the children not to talk to professionals. Examples include instances of E telling school staff that she would be in trouble if the mother found out

that she had spoken about things that happened at home. The mother denies these allegations. For reasons set out below, I do not consider it proportionate or necessary to consider these matters in greater detail.

Allegations against Z

113. On behalf of the local authority, Miss Henke submits that Z is a passive man who is manifestly incapable of effectively challenging the mother and therefore lacks the capacity to provide the children, and in particular his daughter D, with sufficient protection. As evidence of his passivity, Miss Henke cites the fact that he agreed to look after the children from an early stage in the relationship even though he was unhappy about doing so, and his reluctance to step in and stop the play fighting between W and the mother even though he thought it was inappropriate. Both Miss Henke and Ms Fottrell also rely on Z's failure to challenge the mother's apparent acceptance of R's visits or take active steps to prevent him visiting the home, even though he knew of allegations of child abuse against R and felt uneasy about the man.
114. Miss Henke submits that the most worrying example of Z's passive attitude, and inability to protect the children, was the fact that, notwithstanding his attendance at the family group conferences, he failed to take active steps to prevent X having contact with the children at XX's house. On behalf of the guardian, Ms Fottrell submits that Z was, in effect, complicit in the deception concerning X's contact because he did not speak up about it either at the time or after the second arrest.
115. Miss Henke points to inconsistencies in Z's accounts about his knowledge of his lodger's criminal activities, and disputes his assertion that he did not know the nature of his lodger's offending until after the latter was convicted. An alternative suggestion by Miss Henke is that this is another example of Z's passivity and lack of protective instinct. Ms Fottrell describes Z's conduct and evidence in respect of the issue concerning his lodger as evasive and minimising - at one point, Z gave an account of his lodger's conduct as being that he was "made to" touch his stepsister in respect of whom he had been charged with incest. Both Miss Henke and Ms Fottrell draw attention to inconsistencies about some of the details of Z's evidence concerning his lodger, for example where he slept when the children were staying at the house. One notable piece of evidence about this issue was the explanation given by Z, and supported by the mother, that he had not thought it was up to him to tell her about the lodger's offending, but rather leaving it to the lodger himself to do so.
116. Both Miss Henke and Ms Fottrell draw attention to matters from Z's background as providing further cause for concern as to his capacity to protect the children and in particular his daughter, D - in particular, the fact that as a young man he had a child who was placed for adoption; an incident of reported domestic violence involving a previous girlfriend; and issues with alcohol and cannabis use. In respect of this latter issue, Miss Henke submits that the extent of his cannabis habit must have had some effect on his demeanour and behaviour.
117. Overall, the local authority and guardian content that there is considerable evidence that Z lacks the capacity to protect his daughter. Ms Fottrell describes him as directly complicit in the mother's failure to protect children, unable to manage, recognise or reduce the risk from X, R or his lodger, and willing to back up the mother very

dangerously when he should have confronted her or cooperated with the local authority to protect the children.

118. In response, Mr Samuels describes his client as a relatively peripheral figure in the local authority's case in this fact-finding process and points out that he was barely referred to at all either the local authority's opening note or in the evidence. In short, it is Mr Samuels' case that Z was never part of the protective plan for the children and it would therefore be unfair to make findings against him of culpability for failure to protect. Furthermore, as he was not responsible for the children, it would be unfair to ascribe blame to Z for any neglect suffered by the children.
119. Mr Samuels draws attention to evidence that his client was a positive influence on the children's lives. All of the children liked him. Although the local authority complains about his alleged failure to protect the children, there is no criticism of his behaviour towards them. The comments about his behaviour in contact sessions have been wholly favourable. He has demonstrated that he has the capacity to meet the day-to-day needs of his daughter. Mr Samuels draws attention to many examples of positive comments about Z in the contact records.
120. Mr Samuels submits that there is nothing in Z's background that gives rise to significant concern about his parenting capacity. Z accepts that he agreed to the adoption of his child, but says that this was the right decision for that child at that time. He acknowledges that he has smoked cannabis on a regular basis and that on one occasion he was involved in a physical scuffle with his former partner.
121. Z only entered the family home after X left. He was therefore not present during the period when X was regularly abusing A in the property and having a sexual relationship with W. Manifestly, no blame attaches to him in respect of any failure to protect the children before his arrival and Mr Samuels submits that it would be also wrong to make any finding against Z in respect of X's ongoing contact with the children. At all times, responsibility for protecting the children lay with the mother. Furthermore, Mr Samuels contends that it is unfair to criticise Z when the local authority plainly failed to appreciate the extent of the risk posed by X and furthermore positively approved XX as a contact supervisor. Although he attended family group conferences, Z was not regularly involved in wider conversations between the local authority and the mother about child protection issues. He was not himself part of the plan. In those circumstances, it would not be fair to criticise Z for failure to protect the children.

Discussion and conclusions

122. Having considered all the evidence, I conclude that X is a cunning and manipulative paedophile. He systematically set about grooming A and W, using similar methods, and his abuse of both boys was of a similar nature and frequency. It was relentless, extreme and profoundly damaging. X has been highly selective about what he says he can remember, and self-serving in everything he says, including the diary. I conclude that he is lying when he says he cannot remember details of his offending. He has been deliberately selective about what he has chosen to share with this court and other professionals. He has also at times minimised his behaviour and attributed blame to others. He sought to explain his approaches to the internet chat rooms by complaining of feeling isolated and controlled by the mother. In cross-examination, he denied that

he been trying to blame the mother for his behaviour but it is plain that to some extent this is exactly what he was seeking to do. The evidence shows that he has an aggressive temper and is capable of intimidation. Contrary to his assertions that the mother was controlling him, I find that it was he who was manipulative and controlling in his relationships within the household

123. On balance, I find it more likely than not that he continued sexually abusing A when they shared a bedroom at XX's house. I note the examples of inappropriate contact between X and A during contact (stroking his hand, allowing A to sit on his knee). Given his predilections, it is to my mind extremely unlikely that he would be able to refrain from abusing A when they shared a bedroom at XX's home. XX was completely ineffective as a contact supervisor, and I accept M's assessment that X intimidated and exploited his father, and that XX would struggle to see what was going on between X and the children. M had been unaware before he gave evidence that XX had been supposed to be supervising contact.
124. E has not given oral evidence before me and I must therefore treat her allegations, set out during her ABE interview, with caution. On a balance of probabilities, I find that she told the truth to the police when she said that X photographed her naked in the bathroom on one occasion. In other respects, however, her allegations about his behaviour are not sufficiently detailed or clear to enable the court to make findings. Similarly, although there is some evidence to suggest that X may have abused C, I do not think it sufficiently clear to support a finding on a balance of probabilities. It is, however, manifestly clear that, had it not been for the discovery of the photos on his phone, X would have remained in the home and, in all probability, move on to abusing C in the same way that he abused A and W.
125. I have carefully considered what is, perhaps, the most important issue in dispute at this hearing – did the mother actually know that her son A was being sexually abused by her partner X? The mother emphatically denies it but there is considerable circumstantial evidence to suggest that she may have known what was going on. I acknowledge in particular the small size of the property and the fact that X seems to have been fairly open when photographing A. Perhaps the most striking piece of evidence is E's statement to the police officer that it was "kinda obvious". As noted above, E has not given oral evidence and I must be careful to avoid speculating and over-interpreting what she has said. I understand her to mean that it was never discussed that X was abusing A but obvious to her that this was going on. The question is: if it was never discussed, can the court conclude that it was obvious to the mother? I accept that it would be obvious to most people but, as Ms Fottrell observed, the picture that emerges from the totality of the evidence in this case is that the mother is someone who is incapable of recognising sexual risks to children. I looked several times at the video clip from X's phone in which A, standing naked in the bath, is heard to say "you leave me to do all the clearing up again mum". I have concluded that the mother was not present when this clip was recorded. The person to whom a remark is addressed is not necessarily present and, had the mother been present, I think it likely she would have responded.
126. Although the mother is manifestly lax about sexual matters in many respects, including her own behaviour, the evidence does not demonstrate that she is or would be indifferent to the sexual abuse of her own children. On a balance of probabilities, I

find that the local authority has not proved to the requisite standard that the mother actually knew that A was being sexually abused by X.

127. I have no hesitation, however, in concluding that she ought to have known that the sexual abuse was taking place. If it was “kinda obvious” to E, it should have been obvious to the mother. There were sufficient indications that ought to have alerted any responsible parent to the fact that abuse was going on in the house. I do not accept Ms Fottrell’s submission that the mother was disinclined to protect her children from such risks, but I do agree that she was utterly incapable of protecting them.
128. I am satisfied that E knew, at some level, about X’s abuse of A, based on her comments in the police interview. The other children may also been aware at some level that abuse was going on, but I think the local authority is right to concede that they did not necessarily have a full understanding of what was happening.
129. For a number of reasons, including X’s paedophile tendencies and the mother’s complete lack of awareness about sexual risk, there was a serious lack of sexual boundaries in the home. I accept W’s account of the brutally abusive treatment he received at the hands of X. Again, after careful consideration, I accept the mother’s account, supported by W, that she only became aware of the sexual activity between X and W when she found them in bed together. But the question asked by M in the course of his evidence was extremely perceptive. Having seen X in bed with W, why did she continue to have X in the house and why did she fail to tell social services?
130. It has been particularly difficult for this court to untangle the evidence concerning the mother’s own relationship with W. Both W and the mother herself insist that there was no sexual relationship between them. X asserts that on one occasion they engaged in a threesome and that W and the mother had sexual relations on other occasions. W accepts that he had a crush on the mother, but denies flirting with her. The mother states that W did flirt with her, but denies doing anything to encourage him. Again, however, I accept the evidence of M about their behaviour. I find that W sat on the mother’s knee, that she sat on his knee, that she put her arms round him, and that he followed her around “like a shadow”. In short, he was besotted with her and she did nothing to discourage him. Such behaviour was manifestly inappropriate, given their respective ages and the circumstances in which he had come into the house. It was particularly inappropriate conduct for her own children to witness, as I am satisfied they did.
131. The question is whether the relationship went further. The mother denies it, as does W. W still harbours feelings for the mother and would, I accept, be capable of falsifying his account to support her case. The only evidence that there was sexual activity between them comes from X. In my judgment, he is a wholly unreliable witness with his own agenda, who has behaved deceitfully in abusing others within the house about which he continues to withhold information. After careful consideration, I therefore conclude that the evidence is insufficient to lead to a finding on a balance of probabilities that the mother had a full sexual relationship with W. In my judgment, however, her highly inappropriate behaviour towards him was further serious evidence of her lack of understanding of sexual boundaries, and was in itself abusive behaviour towards a boy whom she was supposed to be looking after.

132. In this context, I find that the play fighting that took place on a regular basis in the property between the three adults was wholly inappropriate and in some respects a sexualised activity. It was utterly inappropriate for X and the mother to engage in such behaviour with W. In so far as the mother tried to stop it, her efforts were feeble and ineffective. I find that the children must have witnessed this play fighting on occasions. I find that it was only when Z intervened that the behaviour came to an end.
133. The mother's culpability for failing to protect the children from X after the first arrest must be assessed in the light of the local authority's manifest breach of its responsibilities towards the children. In its response to the human rights claim brought on behalf of the children by the guardian, the local authority accepts that it failed to properly appreciate or assess the risk X posed the children; failed to convene a child protection case conference following X's first arrest; failed to implement a child safety plan which was fit for purpose; failed to make safe contact arrangements between the children and X; failed to carry out any adequate assessment of XX's suitability to supervise X's contact with the children and failed to assess the risk of him doing so adequately or at all; and failed to carry out any adequate assessment of the mother or her ability to protect the children from the risk posed by X to the children. The local authority accepts that XX was an ineffective contact supervisor and that the children were thus exposed to a continued risk of harm from which they ought to have been protected. In addition, in the light of X's behaviour during contact, the local authority accepts that it failed adequately to appreciate the potential for X to use contact to groom the children and wrongly saw his physical touching and interaction with the children as an expression of genuine affection, failing to be alert to the possibility that such behaviour reinforced behaviour learnt at home which might have been abusive.
134. Miss Judd submits that there is no contemporaneous evidence that the mother was ever told after the discovery of the child pornography on X's computer that he was a risk to the children. She further submits that there is, and was at the time, a lack of clarity about the restrictions on contact, in particular whether or not X could visit the property when the children were absent. I accept that at the time the mother expressed some confusion about the bail conditions. I also take into account that, inexplicably, the local authority is unable to produce a copy of the written agreement signed by the mother after the first arrest. But I think it more likely than not that she was told by the police and the social workers about the nature of the material found on the computer and that it was not safe for the children to be left alone with X. It is the mother's case that she did not appreciate the risk that X posed to the children after the first arrest. But any mother with an appropriate awareness of sexual risk would have realised that a man in possession of pornographic images of children posed a risk to children. The risk was clearly understood by others, including the fathers of the older children who stopped all contact with X at that point.
135. Miss Judd submits that, if the local authority was prepared to rely on XX as a suitable contact supervisor, the mother was entitled to rely on their assessment. Furthermore, there was apparently no attempt by the local authority to restrict indirect contact and, as a result, as is clear from the diary, X had frequent and unrestricted indirect contact after leaving the family home. However, despite the local authority's manifold failings, I find that a substantial proportion of the responsibility for X's unauthorised

and unsupervised contact with the children after September 2014 lies with the mother. I find that in the early stages she was extremely reluctant to accept that X had done anything seriously wrong, and failed to appreciate the risk to the children. She wanted to carry on the relationship and to resume living with X. She plainly invited him to the house when the children were not there and, on a balance of probabilities, I find that she also allowed him to visit the property when they were there. This continued until the mother started a relationship with Z. From April 2015, the father had contact at X's house. This unquestionably included unauthorised overnight contact. I find that the mother knew that X was sleeping in the property. I do not accept her evidence that she thought he was sleeping in the car. Although the local authority had approved XX as a supervisor, any reasonable mother with a modicum of awareness of risk would have realised he could not effectively supervise contact.

136. I accept that the mother has associated with – and continues to associate with – men who sexually abuse children, notwithstanding her knowledge that they pose a sexual risk. Her evidence about her husband's activities, and her involvement with R, are yet further evidence that she is sadly lacking awareness of the risk of sexual abuse. In closing submissions, Miss Judd accepted on behalf of the mother that she failed to protect children from sexual harm by failing to be sufficiently alert to signs that X was abusing A, and W, and also by failing to appreciate that X would use contact at XX's home to have unsupervised contact with the children. It is accepted that the mother was insufficiently attuned to, and suspicious of what lay behind, X's behaviour towards A – for example, the play fighting and the closeness between them. She should have been put on guard when she saw X in bed with W, but instead failed to see how inappropriate it was. Miss Judd added that her client accepted that she is in need of assistance and education to help understand how to protect the children in future. In my judgment, the mother's current lack of awareness and understanding about sexual risk is a very great impediment to her capacity to care safely for her children.
137. Turning to the allegations of physical abuse, I accept the various descriptions given by the mother, W and M as to X's violent character and temper. I accept that he can be intimidating, frightening and aggressive, and is prone to sudden changes of mood – a seesaw, to use W's word. I accept W's account of X's violent and threatening behaviour during their relationship, forcing him to have sexual relations. I have thought carefully about the allegations that X was violent to E, but conclude that, despite the repeated allegations, the evidence is not sufficiently strong to lead to a finding that he physically assaulted her. E did not repeat the allegations in her ABE interview and did not give oral evidence before me. Such evidence as there is is therefore contained in local authority records and school referrals. For similar reasons, I do not find that the evidence is sufficient to lead to a finding that the children were ever physically assaulted by the mother. The evidence of the children's allegations is largely contained again in the local authority's records. As Miss Judd points out, there are some inconsistencies in the children's accounts. I do accept that the mother shouted at the children, especially at E in the period leading up to her move to her live with her own father after X's arrest when the mother was manifestly struggling to look after the children by herself, but I am not satisfied that the mother ever physically assaulted the children.

138. Miss Henke describes neglect as a fundamental failure to achieve the basic requirement of caring for children, adding that, in order to grow into stable adults capable of managing their own lives, children need to be secure that the adults caring for them will keep them safe, reasonably clean, nourish them and ensure they have appropriate clothes and living conditions. I agree. But the level of neglect in this household was not on a scale that is often encountered in care proceedings. The local authority was aware of many of the concerns about the physical care of the children but concluded that they were not on a scale to justify statutory intervention. Had it not been for the local authority's eventual realisation of the extent of sexual abuse in the family, it is in my judgment likely the proceedings would never have been started. The extent of the sexual abuse, the level of sexual risk and the magnitude of the failure to protect children from sexual abuse dwarf the features of neglect in this case.
139. I do find that children's living conditions in the family home were poor. I also find that the mother failed adequately to treat B's head lice. I do not accept the mother's explanation of B's allergic reaction to certain medications as providing a full or reasonable excuse for her failure to tackle the problem. I accept the evidence of school staff that C was sent to school on occasions in soiled underwear, although this seems to have been confined to a relatively short period. I also accept the local authority's evidence that, when he arrived in care, J was malodorous and in dirty and ill-fitting clothes. I agree that the neglect, and the consequential shame and indignity suffered by the children, was harmful. Accordingly I do make the specific findings of neglect sought by the local authority, but I repeat that the level of neglect was not on a scale frequently encountered in care proceedings, nor as serious as the level of sexual abuse, and the risk of sexual abuse, that existed in this family.
140. In my judgment, the allegation that the mother sought to suppress the truth of what was happening at the house is supported by little evidence of substance. Put at its highest, it adds only marginally to the local authority's case. I do not propose to make any findings on this aspect. The most substantial evidence of the mother's failure to cooperate with the authorities lay in her failure to comply with the local authority's requirement that X should not have any unauthorised or unsupervised contact after the first arrest. In addition, I do not consider that the allegations of drinking or drug use add anything of substance to this case.
141. I turn finally to the allegations against Z. I agree with Miss Henke's description of Z as a rather passive figure. That accorded with my impression of him in his oral evidence. Importantly, however, unlike the mother, who had a startling lack of awareness of sexual boundaries and whose protective instincts are manifestly very limited, I found that Z had an understanding of the need for boundaries and an awareness of sexual risk, but failed in a number of respects to take proactive steps which would normally be expected of someone in his position. He knew of the charges that had been levelled against X after his first arrest. When present during contact, he noticed the way in which A sat on X's knee, which, as he acknowledged in cross examination by Ms Fottrell, made him think that A was infatuated with X, and agreed that they had a bond that was closer than that between father and son. He did not, however, challenge the mother about this nor take any other action because, in my judgment, his protective instincts are not sufficiently developed. This is consistent with his attitude other issues – for example, the play fighting between the mother and

W, his attitude to his former lodger's offending, and R's attempts to get close to the family after X's departure.

142. In short, I conclude that Z ought to have realised that the children were at risk from X, and taken more active steps to ensure that the children did not have unsupervised contact with him. He has an awareness of the risk of abuse, and the need to take appropriate steps to protect children, but his passive character and his relationship with the mother stopped him intervening. His culpability for failure to protect is not as serious as the mother's. It is possible that, with help, he may acquire a greater capacity to safeguard his daughter. There are aspects of his past behaviour which suggest a degree of fecklessness, notably his cannabis habit, but in my judgment these are not so serious as to exclude him as a potential carer for D. Following this fact finding hearing, I anticipate that he will undergo further assessment to test his responses and to establish whether he does indeed have the capacity to care for his daughter.