



Neutral Citation Number: [2022] EWFC 12

Case No: SA21C50004 & SA21C50022

**IN THE FAMILY COURT**  
**AT SWANSEA**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 04/03/2022

**Before:**

**MS JUSTICE RUSSELL DBE**

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**Between:**

**Swansea CC**  
**- and -**

**Applicant**

**11 Respondents**

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**Ruth Henke QC & Lucy Leader** (Counsel) (instructed by Swansea City Council)  
**for the Applicant Local Authority**  
**James Tillyard QC & Rhys Jones** (Counsel) (instructed by Cameron Jones Hussell  
& Howe) **for the 1<sup>st</sup> Respondent MX** (mother of A,B, C, D &F)  
**Dominic Boothroyd QC and David Crowley** (Counsel) (Instructed by Peter Lynn  
& Partners) **for the 2<sup>nd</sup> Respondent FX** (father of A,B,C & D)  
**Matthew Rees and Patrick Llewelyn** ( Counsel ) (Instructed by T. Llwellyn Jones  
Solicitors) **for the 3<sup>rd</sup> Respondent FZ** (father of F)  
**Andrew Bagchi QC & Kate Smith** ( Counsel) (Instructed by Goldstones Solicitors)  
**for the 4<sup>th</sup> Respondent MY** (mother of E)  
**Rhian Kirby** ( Counsel ) (Instructed by Hains and Lewis Solicitors) **for the 5<sup>th</sup>**  
**Respondent FY** (father of E)  
**Kate Hughes QC and Gareth Evans** (Counsel ) (Instructed by Hutchinson Thomas  
Solicitors) **for the 6<sup>th</sup> Respondent A** (by his Guardian Rhian Jones)  
**Libby Harris and Clare Templeman** ( Counsel ) (Instructed by Bowermans Law)  
**for the 7<sup>th</sup> Respondent E** (by her Guardian Lucy Blackwood)  
**Jane Crowley QC and Cennydd Richards** (Counsel) (Instructed by Graham Evans  
& Partners) **for the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> & 11<sup>th</sup> Respondents, B, C, D and F** (by their  
Guardian Samantha Hall)

Hearing dates:  
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## **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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MS JUSTICE RUSSELL

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.

**The Honourable Ms Justice Russell DBE:**

**Introduction.**

1. These are public law proceedings of which this is the fact finding judgment. The complexity of the proceedings arises not out of the facts *per se* but because the case concerns inter-connected families; the parents and their partners and their respective children. The proceedings commenced as private law proceedings but as the Local Authority became more involved in those proceedings to the extent of accommodating the children (all with the exception of one remain in local authority care) the local authority issued proceeding under s31 of the Children Act (CA) 1989. In an effort to protect the children and to keep the identities of the children anonymous the three families will be referred to as X, Y and Z. The case concerns a local authority in Wales.
2. There are six children in the proceedings they range in age from (at the time of this judgment) 16 to 2 ½. There are 4 children in the X family the eldest is a boy (A) aged 16, the next in age is a girl (B) rising 14, followed by a boy (C) of 11 ¼ and the youngest a boy (D) of 5 ¾. Their parents are their father (FX – aged 34) and mother (MX - aged 37). There is also a girl of 14 ½ (E) whose mother is MY (aged 40) (her father (FY) plays no significant role in the fact-finding) and the youngest a little girl of 2 ½ (F) whose mother is MX. F was born following MX’s relationship with F’ father FZ (aged 41).
3. The issues which the court is being asked to decide all relate to the adults’ behaviour, its impact on the children and the harm the children suffered as a result. In the trial bundle a document headed schedule of allegations sets out the complaints and allegations that the relevant children have made and those which have been made about the children themselves. The Local Authority do not seek any findings against any of the children in this case or seek any finding against any child on any basis at all. To quote from the very helpful opening document prepared by Ms Ruth Henke QC the “*focus of the local authority’s case and this court’s enquiry is the responsibility of the adults. In that context we remind the court in opening that no findings in this case are sought against [FY]. It is the actions and inactions in this case of [MX] and [FZ] and the actions and inactions of [MY] and [FX] as at the relevant date which are the focus of the fact-finding hearing.*” For reasons which are set out in the body of the judgment below the Court has found the case as set out by the local authority proved on the balance of probabilities.

4. As observed by Ms Henke on behalf of the local authority this fact-find exercise concerns the deficits in the exercise of parental responsibility of the four principal adult protagonists and parents MX, FX, MY and FZ. As will be seen below, and when taken in isolation, some of the complaints made by the children and the findings sought might seem relatively minor. It is the local authority's case that *"nothing could be further from the truth. As a consequence of their respective parents' behaviours, the children for whom this court is concerned have suffered significant harm. We say that this is the case which underscores the significant harm children suffer when their parents chose to put their own needs before their children's needs and when children are exposed to a coercive, controlling and physically abusive home life."* Based on the findings I have made below, I agree.
5. The relative complexity of the case came about not only because of the interplay between the adults, the conflict between the parents brought about by the change in their own inter-personal relationships but also because of the additional conflict between members of the extended families, in particular the family of MX, the maternal grandparents, aunts and uncles. There were allegations made about inappropriate sexual behaviour made by the children in respect of each other (to which I will return, about which no findings are now sought by the adult respondents with the sole exception of FZ).
6. In any event the ambit of the fact-finding that this Court has heard was determined by the Court's ruling on 6<sup>th</sup> September 2021, that the focus of the fact find will be on the adults' responsibility; following this Court ruling that the burden of responsibility should not rest on the shoulders of the children in the case. In this judgment following the fact finding hearing the Court will consider and determine whether the adults have failed to protect the children from significant harm including, in this case, from an "argument by proxy." The Court will consider and determine the extent to which the atmosphere between the adult respondents produced the environment in which the complaints were made, the level of supervision by the parents and adults responsible for the children such that these complaints were made, the level of distress for the children caused by the acrimony between the adults and the adults' respective responses to the complaints made by the children; and the undoubted ill-effect of inter-familial conflict on the children. The Court will consider and determine the complaints of domestic violence and abusive behaviour in the MX/FZ household.

### **Chronological history to the proceedings**

7. MX and FX began living together in or about 2005 and got married in 2007. During their relationship they had four children A, B, C and D. In 2013 the X family became neighbours with the Y family and remained so until the autumn of 2016. It was early June 2017 that the X family first became involved with child protection agencies when MX reported to the police that A had run away from home and was missing. Chronologically in 2012, and for the sake of completeness, there had been a prior occasion involving child protection concerning the Y family about which no findings are sought: E had complained that FY had physically assaulted her but his explanation was accepted after a Child Protection (CP) medical.
8. When A went missing in 2017 he was only 11 ½ ; he appeared to have left his home through a back window without his shoes, his phone and any money. It was reported that he said FX had beaten him but there were no physical signs of beating. A was

spoken to by the police and complained that his family had beaten him up. When asked further questions he said that sister had hit him on his legs with a nerf gun and that that had left a bruise. MX reported that A had told a friend in school that he wanted to kill himself and that he had argued with his siblings. On further investigation the school reported no concerns. Having heard the evidence of both parents, and putting aside issues of dispute, it is clear to the court that A had been having difficulties for some time at home, and that his parents found his behaviour difficult to deal with themselves. In any case A returned home.

9. MX and FX separated in 2018 and agreed that their children should continue to live with their mother in the family home and that FX would live elsewhere and would have regular contact with the children, he had moved out in July 2018. Within a very short time (the exact timing of this is disputed) FZ moved in to live with MX and the four X children. MX and FX had previously only met online when playing games. They both agree that they did not meet face to face until the first time FZ came from England to stay in the family's home, not long after FX had left. About October 2018 FX himself began a relationship with his erstwhile neighbour MY and regularly stayed overnight at her (and E's) home. Within a short period of time, from the point of view of all five children, their family dynamics and the adult carers relationships had all altered dramatically.
10. It is of note that E herself was only 11 years old at the time her mother began a relationship with FX. Prior to that there is some objective evidence of the children being unsettled and acting out, for example in October 2018 B told a teacher that a year 6 boy had been writing her "*dirty notes*" and had touched her over her clothing to her private area. According to B she could not read this boy's writing. After telling the teacher to is reported that B left the classroom laughing with a friend. On investigation the school found that the boy denied the allegations, was upset and said that B had made it up claiming that she had sent him a note asking him to be her boyfriend. While no finding is sought by the local authority in relation to this allegation, no finding could be made on the evidence before the Court, at one stage of these proceedings much was made by the adult parties of this and reports of other incidents concerning sexualized behaviour involving B and, in particular, E. As no findings are sought they will not be repeated here other than to say the Court is concerned by the attempts to shift the blame to the children rather than the adults for the situations in which their children found themselves.
11. The youngest child who is a subject of these proceedings is F, born in July 2019 as a result of the relationship between MX and FZ.
12. Prominent in the findings sought by the Local Authority is the domestic abuse said to have been perpetrated by FZ and to a lesser extent MX and FX as well as a failure by Mr and Mrs X and MY to protect their children from that abuse or the harm caused by poor or inadequate parenting. A complaint was reported to have been made in or around September 2019 by A who was then a pupil at the local comprehensive school. A said in school that FZ rammed his head into a wall; A had provided a written statement. A said that he had been playing cards with B when his younger siblings told FZ that they were arguing and after an argument with A FZ is said to have pushed the side of the boy's head into a wall. A also complained that FZ had gripped his arm in another incident. A told the school that FZ drinks (alcohol) everyday which, demonstrating

some sympathy for FZ, A had thought could be because FZ was not seeing his own children.

13. In the beginning of 2020 there were concerns that E had been chatting to someone referred to as “a known sex offender” online and chatting to men online. This was not reported to the police by her mother who later conceded to me in her oral evidence that although she had taken steps to restrict E’s use of devices she should have reported her concerns about the persons to whom E had been chatting to the police and/or PC authorities. On 6<sup>th</sup> March 2020 A was excluded from school because of his behaviour. The schools educational welfare officer (EWO) drove A home, A complained about his treatment by FZ. The EWO gave evidence about what happened that day and the behaviour of FZ on A’s return to which I shall return later in this judgment. The following week MX attended school with A who denied even having made a complaint.
14. On 23<sup>rd</sup> March 2020, along with the rest of the UK, Wales entered a national lockdown because of the global Covid-19 pandemic. MX stopped the children’s contact with their father FX. By June of 2020 FX had moved in with MY and her daughter E. The X children began to have contact with their father again the weekend of fathers’ day and stayed with him at MY’s home over the weekend of 26<sup>th</sup> June 2020. They went to stay with their father again from Friday to Sunday on the weekend of 3<sup>rd</sup> July 2020. During this weekend it is the evidence of FX and MY that the X children told them they were frightened of FZ, had witnessed him assaulting their mother, had been abused by him verbally, that they had been told they were moving to England and not to tell their father and that B, then only 12 years old, was being left responsible for much of the care of the younger children.
15. It was the complaints made by the children to FX and MY which led to the private law proceedings. On 5<sup>th</sup> July 2020 MY had contacted the Local Authority’s emergency duty team to tell them that the children had come to have weekend contact with their father and were due to return to their mother, but that A and B had alleged that FZ was physically abusive to their mother and to A, that FZ was controlling of the children and that MX would shout at them. C was reported as saying FZ was abusive to him. MY told the duty team that she had taken notes of what the children had said. FX had said he refused to return the children to their mother because of what they had said to him and MY.
16. Following a phone call from MX on 6 July 2020, the Police attended the MY’s home FX and the four X children were staying. The Court has seen bodycam video images of the scene when the police arrived, and later inside the Y household. There was an aggressive and tense situation outside the house between the members of the maternal family who were present and FX. MY was present inside her garden gate at the time. Although inside the house the four X children and E would have been aware of and seen and/or heard this incident. The police told MX and her mother and father that they were to leave; they were standing on or near the road directly in front of MY’s home.
17. When the police officers spoke to the children on 6<sup>th</sup> July 2020, as can be seen and heard from the bodycam images, they said that that FZ was physically and emotionally abusive to them and their mother. The X children were seen by DC Dallas (from CP) on the 7<sup>th</sup> July 2020. A, B and C all made complaints about FZ and his emotionally and physically abusive behaviour towards their mother and towards them.

18. A week later on 14<sup>th</sup> July 2020 FX confirmed that he did not want to have the children interviewed by the police but that he was going to issue an application for a private law child arrangement orders; in fact the private law proceedings were initiated by MX who issued an CA 1989 application on 15<sup>th</sup> July 2020.
19. Within a week of the private law proceedings having been commenced the next incident of note took which place was on 22<sup>nd</sup> July 2020 when the Integrated Safeguarding Hub received a referral from MY who reported that B had, while playing with some friends including E, told them she had lost her virginity and that later E told MY that B was saying she had been “*raped*” by A and was scared she was pregnant. A pregnancy test was found in B’s bedroom who first said she did not know how it got there and then said that it was because of what A does. FX was reported to have then taken A forcefully from his bedroom. A denied the allegations and his father threw A’s phone on the floor twice smashing it. Almost immediately A was sent by his father to stay with his paternal grandparents. I pause in the chronological narrative to note that it was principally this incident which the adults in the families chose to use in “taking sides” and that those sides were for or against A. The Court has to be mindful of the fact that these allegations were made in against a background of highly conflicted private law proceedings initiated by complaints the X children had made about the conduct of FZ in particular, and not complaints made about one child against another.
20. Later on, on 12<sup>th</sup> August 2020, during the Initial Child Protection Case Conference (ICPCC) in relation to the X children, there emerged further conflict focussed on the what the children had said and done rather than on any adult accepting any responsibility for their own behaviour when the adults in the maternal family sought to blame E for what B had said about A. MX and members of her family raised their concern about E who they said had been speaking with older men and a known sex-offender online; MY confirmed that had indeed happened. MX and members of her family went further and alleged that E bullied B, encouraged sexualized behaviour including the allegations B made against A. The maternal family said that that E had sexually assaulted a 7 year old child (there is no evidence in support of this allegation) and as direct result the three remaining X children (except of A) went to live with their maternal aunt and uncle whilst the police investigated the allegations.
21. There followed the first of several unplanned and precipitate moves for the children, on 12<sup>th</sup> October 2020 the maternal aunt and uncle Mr and Mrs S refused to care for B, Cand D any longer and the three children were prematurely returned to the care of FX . I shall return to this below.
22. E remained in her mother’s care and has done throughout, the only child, apart from the infant F who remained with MX, to have experienced any kind of stability. The maternal family, who had singularly failed thus to deal with the complaints raised by the children in respect of their experience when living with MX and FZ, then made further allegations about E and B watching a film on Netflix, “365 Days”, which had sexual content. At about this time, when taking part in direct work with the allocated social worker, B and E were reported to be “*very close*” although B was also reported to have said that she didn’t like it when E made her kiss girls.
23. The families were now divided along party lines with FX and FY siding with B and MX and her family siding with A, alleging B was lying and that E was a malign influence, in this way there had become a proxy conflict in respect of the children’s

conduct and alleged sexualised behaviour (much of this must have been by design) and the focus was directed and deflected away from serious allegations made by the children about what had occurred when the X children were in the care of MX and FZ. The X children had all, to a greater or lesser extent, complained that they had experienced and witnessed domestic abuse and coercive controlling behaviour on the part of FZ towards their mother and that they had been subject to physical and emotional abuse themselves, with A taking the brunt. A complained that he was not liked within his own father's household and that he was treated differently to B who he said was favoured. In addition the children raised concerns about FZ taking drugs. The adults made allegations against each other in respect of drug abuse; in particular MX complained about FX's drug taking and MY's abusing drugs and alcohol. MY has had a history of mental illness which she has never denied.

24. There has been a police investigation into the allegations the children have made against FZ and another investigation into the allegations made against A by B. They are no longer extant: on 30<sup>th</sup> August 2020 the police confirmed that they were taking no further action against FZ in relation to the children's complaints against him; and, on 15<sup>th</sup> February 2021 the police confirmed they are taking no further action against A.

### **The Applications**

25. There are four extant applications and they are in order of date of issue as follows.
- i) Dated 15<sup>th</sup> July 2020, an application child arrangement orders (CAO) under s 8 CA 1989 that the children live with her made by MX in respect of A, B, C and D (the X children) to which I have previously referred.
  - ii) Dated 5<sup>th</sup> November 2020, an application for s8 CA 1989 orders in relation to the X children made by FX that the children live with him along with an application for a s8 (1) specific issues order in relation to the children's schools.
  - iii) Dated 21<sup>st</sup> January 2021, an application by the local authority for s31 CA 1989 public law orders in relation to the X children and F. On the same date there was a court order making this the lead application.
  - iv) Dated 26<sup>th</sup> March 2021, an application by the local authority for s31 CA 1989 public law orders of which E was the subject child.
26. As can be seen from the chronological outline of the case above the private law proceedings which preceded the public law applications and were based on allegation, cross-allegation and conflict, along which the families were divided or encamped, in what I find to have been an increasingly acrimonious battle in which the welfare of the children was lost and overlooked. This cannot have been accidental as their focus on the children's behaviour resulted in the adults avoiding or deflecting questions about their own parenting and behaviour. The parents were far from blameless as we shall see, but other members of the extended family, the maternal grandparents, uncles and aunts in particular, did little to defuse the situation and proved to be incapable of putting the children's welfare first; specifically causing A more harm, distress and trauma. In fact there were two principal areas of dispute those involving allegations of inappropriate sexual activity and/or sexualised behaviour concerning the children and those concerning the abusive behaviour of the adults which centred on the domestic

abuse in the FZ/MX household and FZ's abusive behaviour towards the X children, but extended to FX and to a general failure to protect and adequately care for the children.

27. It is these latter complaints with which this Court is concerned, but in essence the public law proceedings were initiated as a result of the acrimony between the parents (and the wider family). It is all too clear to see how their increasingly entrenched views in respect of the allegations of inter-sibling sex abuse served to deflect from other serious instances of neglect and significant harm to the children. What is more the children themselves, given A's virtual exile from his siblings, must have been well aware of the stance taken by the adults. These views and the conflict designed on the one hand to incriminate (and to criminalise) A and take up cudgels on B's behalf, and on the other to exculpate A by blaming FX and MY for the allegations made by B, this blame was extended to include the (then only just 13 year old) daughter of MY. In this way the adults directly involved the children in their dispute with the result that A ended up isolated and B was given no choice but to adhere to her allegations and to some extent at least become subsumed by, and committed to, what she had said; it cannot be ignored that her allegations occurred around the time her parents became involved in acrimonious proceedings about their children, nor can it be treated as mere coincidence. Whether their actions were intentional or not matters little as by this time it must, or should, have been apparent to all the adult protagonists, be they parents or members of the extended family, that the children were being harmed by their conflict.
28. During the currency of the private law proceedings the complaints made by the children about the adults became subsumed by the allegations made about sexualised behaviour on the part of the older children. It must be noted that as a matter of fact, which they accept, and with the exception of MY being aware of E's online contact with adult men, none of the adults were ever aware of any inter-sibling sexual behaviour or abuse. Moreover the allegations by B, which were denied by A, were made in isolation, that is to say without any previous complaint, any complaints made at the time of the alleged assaults and very there is very limited in the way circumstantial or material evidence to support them. As such would be difficult, if not impossible, for the court to make findings that they had taken place as alleged by B, even on to the civil standard of proof, namely the balance of probabilities. Similarly the allegations made by MX and her family that there had been an inappropriate relationship including a sexual element between B and E are, evidentially to all intents and purposes without foundation.

### **The children's current placements**

29. B, C and D were made subject to interim care orders on 26<sup>th</sup> February 2021 and were moved to foster placements the same day, with B being placed separately from C and D who are placed together. They have regular supervised contact with their younger sibling F who remains in the care of MX. An interim care order was made in respect of F on 26<sup>th</sup> February 2021 under which she is placed at home with her mother; FZ is excluded from the home. FZ has been offered regular contact with F which he has not always taken up. E is the subject of an interim supervision order made on 15<sup>th</sup> April 2021 and remains placed at home with her mother. E has regular contact with her father FY who has no active role in this part of the proceedings as no findings are sought in respect of his conduct as E's parent.
30. Of the X children, indeed of all the children, A has had the hardest and most distressing time he was made the subject of an interim care order on 17<sup>th</sup> March 2021. After several



failed family placements A was placed in foster care but that placement broke down after a short time and after consultation with his guardian he was placed in residential care. A has supervised contact with MX, but does not see his father.

### **Rulings: evidence and findings**

31. After issuing s31 CA public law proceedings the local authority has filed and served the threshold criteria document setting how it puts its case and the facts it relies on in respect of how the s31 threshold is crossed. It has been agreed by all parties that the threshold *is* crossed in this case in relation to each of the six children. The adult parties have made concessions regarding the evidential basis for the threshold being met what remains at issue, and for determination, are some salient facts in respect of the adults behaviour and the harm caused to the children which remain in dispute and fall to be decided, and which ultimately underpin those concessions.
32. The relevant threshold document drafted on behalf of the local authority is dated 7<sup>th</sup> May 2021. The findings sought were set out in narrative form (see under the heading Law below) The document includes this Court's ruling of 6<sup>th</sup> September 2021. *“The court ruled that it was not necessary to determine the allegations of sexual activity between the children in this case. The focus of the fact find will be on the adults' responsibility; the court clearly ruling that the burden of responsibility should not rest on the shoulders of the children in the case. At the fact finding hearing the court will consider and determine whether the adults have failed to protect the children in this case from an 'argument by proxy'. The court will consider and determine the extent to which the atmosphere between the adult respondents produced the environment in which the complaints were made, the level of supervision by the adults of the children such that these complaints could be made, the level of distress for the children caused by the acrimony between the adults and the adults' respective responses to the complaints; and the effect of that acrimony upon the children. The court will also consider and determine the complaints of domestic violence and abusive behaviours in the X/Z household.”*
33. Sexual allegations. Above I have set out that in any event, and when taken as a whole, the evidence before the Court in respect of the children's allegations of any inter-sibling sexual activity would make it difficult to reach any conclusion in respect of the allegations other than, of course, the fact that the allegations were made. The harm already caused to the children would be exacerbated by an enquiry that would be unlikely to reach any conclusion one way or another in respect of what may or may not have occurred between A and B. The only unambiguous evidence is one the one hand that B complained about A sexually assaulting her at a time when she was very likely to be distressed, unsettled and needing attention and on the other that A has always denied the allegations. The circumstances at the time the allegations were made was a time of family breakdown and conflict. It may be that some sexualized behaviour took place, in addition to which there was the fact that B was largely ignorant and certainly untutored about sex and sexual matters (other than what she may or may not have seen online) and had had no guidance from her parents. She had missed her first year at secondary school and would have lost out on any sex education formal and informal through a time she was obviously becoming sexually aware. Specifically, the Court rejects any suggestion that having watched “365” on Netflix with another adolescent would render an otherwise sexually ignorant 12 year old knowledgeable about sex as

opposed to sexually aware nor would it make up for, or cure the deficits in sexual education and parental guidance. B certainly now believes that there was sexual activity between herself and A.

34. As to the allegations concerning E I consider that they are without foundation. At their ages at the time it is very likely that there would have been discussion and exchange of information about sex between the two girls who were friends but there is no evidence about its content. E had had the advantage of schooling and parental guidance, although in respect of the latter it is clear that her mother was somewhat dilatory in ensuring sufficient in the way of parental controls on devices and monitoring had taken place. Unsurprisingly as it supports their case far too much was made by the maternal family of the two girls kissing on a phone video; as observed by the social worker when the local authority was told about it was no more than mucking about.
35. In addition to which B along with the other children would have been made more aware of the “sides” being taken by their own parents and their extended families; this is expressly accepted by her father FX (see concessions made below). The polarisation in the two sides of the children’s family can only have caused yet further and likely irreparable damage to interfamilial relationships and undermined the possibility of reconciliation and reunification. B, as any child would in her position, must have felt she had to stick with her story in which her family now had a vested interest. In short the enquiry into these allegations would be unlikely to reach any conclusion and the enquiry itself would be detrimental to the welfare of these children now and in the long term. In respect of any sexualised relationship at all between B and E I can dismiss that allegation entirely and I do so for reasons elaborated on above and below. In the event it is only FZ who pursued that aspect of the case; a position that will bear further examination when considering his conduct in respect of the children as a whole.
36. The Court decided that for welfare and evidential reasons, that is to say that there would be likely to be damage to the well-being of the respective children, a position supported by the analysis of their court appointed guardians, balanced against the need for the children’s evidence in order for the Court to determine the issues in dispute, that no child should be required to give oral evidence in this case by pre-recorded interview or otherwise in relation the allegations of sexual activity between the children or in relation to the allegations of domestic violence made against FZ. I applied the guidance of the Supreme Court in the seminal case of *Re W (Children)* [2010] 1 FLR 1485 SC, and that of the Family Justice Council of December 2011. When considered in the context of all the evidence available to the court and balancing the limited advantages of the children giving evidence against the likely harm caused to them by doing so, and in following the guidance the balance was clearly in favour of the children not giving evidence albeit pre-recorded.
37. I considered, before making that ruling, and had taken into account all the evidence placed before the Court along with the written submissions on behalf of all parties and the oral submissions made on behalf of each party. Again FZ pursued the children, B and C in particular, giving evidence by pre-recorded video interview, in relation to their

accounts about domestic abuse when he was living with them, an application I refused for the same reasons.

### **Threshold and concessions**

38. Ms Henke, to whom I am indebted, collated for the Court's assistance, the admissions or concessions made by the respondent parents, along with the remaining facts or issues in dispute in their responses to the threshold document filed by the local authority. Here I am going to make use of that compilation dealing first with the admissions in respect of the X children the relevant date on 20th January 2021 (the date on which the local authority issued the s31 CA 1989 proceedings). MX expressly accepted that the children were at risk of significant harm and that that risk of harm is attributable to the care then being given to them or likely to be given to them by their parent and/or step-parent not being what it would be reasonable to expect a parent to give to their child (the s31 threshold). FX also expressly accepted the same in respect of parents and step-parents.
39. Both MX and FX accept that the harm suffered by their children and any likelihood of harm suffered related to sexual, physical harm and emotional harm and the impairment of their social, emotional and psychological development<sup>1</sup>. The following concessions or admissions are based on the documents filed on behalf of the parties and have been extracted; all those extracts have been identified in the document filed by the applicant local authority.
40. In terms of the facts MX has accepted that B not attend school between September 2019 and March 2020 and has missed a significant amount of education. In respect of the allegations made by B, MX accepted that B made serious allegations of rape and sexual assault against A as set out by the local authority in their threshold document, and that either the allegations are true in which case B was been sexually abused by her brother in her home and the home of her parents when they were a couple, when living at MY's home and the household of MX and FZ when the relevant adults have failed to protect B from that abuse. Or B's allegations are false allegations in which case she had gained a degree of sexual knowledge and experience which ought to be beyond her years and from which her parents have failed to protect her and that given the timing of the allegations was when B had been exposed to the conflict between her parents, a conflict which is likely to have increased when FX and MY reported the children's complaints about FZ to the police; in either case it is accepted by MX that the allegations are attributable to the care given to B by her parents and their partners at the time not being what it would be reasonable to expect a parent to give.
41. Specifically, and as I have already made reference to MX accepted that since 3<sup>rd</sup> July 2020, MX, FX, MY and FZ had been involved in an acrimonious dispute about where and with whom the children should live and that the children are likely to have been exposed to that dispute and to have been emotionally and psychologically harmed by it. MX accepted that the drug abuse alleged on the part of any of the adults be they

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<sup>1</sup> MX at C85 and C247 of the trial bundle and FX at C93 and C254. These are references to the Court Trial Bundle in respect of documents filed by MX and FX as identified by the local authority and to which this judgment has, in turn made reference. It is not necessary to identify each and every reference/page number.

parents or care givers if proved in relation to each or any of them, was likely to have impacted on the ability of that parent or caregiver to meet the needs of the children

42. FX has accepted that as at the relevant date B had missed a significant amount of education and that she did not attend school between September 2019 and March 2020. Of course and as a matter of fact she then missed yet more school as a result of the Covid lockdown in 2020 effectively missing a year of school by July of 2020 the bulk of which occurred when B was in the care of her parents. Not only did she miss a significant amount of time at school this would have been B's first year at secondary school a pivotal and significant time in any child's education. In their oral evidence to me both her parents appeared to have been so wrapped up in their own affairs that they failed to consider B's welfare and have caused her significant harm in respect of her education.
43. FX accepted that if the allegations made by B about A were true then any reasonable parent exercising an appropriate degree of supervision should have been able to prevent the behaviour described by B from taking place. FX accepts that while he was not aware of any sexual activity taking place there was still a failure to protect. As MX had done, FX has accepted, as can be seen in the documents filed on his behalf, that B and the other X children had been exposed to the conflict between their parents and their wider family, but FX also accepted that exposure included exposure to the allegations that had been made and to become wrapped up in the detail of the allegations which will have caused them emotional harm. In respect of the allegations made by B, FX accepted that if those allegations were not true than she has an age-inappropriate level of sexual "knowledge" [my parenthesis]. Her father has accepted that a reasonable parent should prevented B having access or being exposed to that level of sexual information and the fact that she has that level of awareness means that he has not provided her with the appropriate care.
44. In respect of E both her parents accept that the threshold is met. No findings are sought in respect of FY, the findings sought relate to MY conduct as E's parent and FX as her co-care-giver. The relevant date is 20<sup>th</sup> January 2021 which is the date the local authority took protective steps in relation to E and it is accepted that at the time E was at risk of suffering significant harm whilst in the care of her parents or step-parents or care-givers, attributable to the care being given to her or likely to be given to her by her parents or step-parent or care givers was not what it would be reasonable to expect a parent to give to their child. The harm E was likely to suffer is accepted to be sexual, physical and emotional harm and the impairment of her social, emotional and psychological development. MY accepts that from approximately 25<sup>th</sup> July 2020 until 21<sup>st</sup> January 2021 she regularly misused amphetamine and that the level of amphetamine taken may cause labile mood and unpredictable behaviour (during intoxication) together with withdrawal symptoms such as low mood, intense lethargy and cravings (when not intoxicated).
45. Although MY had little choice but to admit drug abuse following the results of drug tests, I found her to be open and frank even when giving evidence about her drug abuse. She went into considerable detail in her explanation of how she got the amphetamine, how and where she hid it in her home and how she used the drug in powder form, surreptitiously and without being seen even when others were present in her home FX asserts that the levels amphetamine found in his hair strand tests were as a result of environmental exposure.

46. Unfortunately for MY (and her daughter E) she has a history of anxiety, depression, low mood, paranoia, visual hallucinations and post traumatic stress disorder (PTSD). At times her mental health has affected her daily life and her ability to care for any child. MY has had chronic and severe agoraphobia and in 2020 was still unable to go out unaccompanied and experienced panic attacks sometimes three to four times in a day. MY accepts that when not under control her mental health had an adverse impact on her parenting ability and to meet the physical, emotional, and psychological needs of her daughter E and, if not controlled, was at the relevant date likely to have a similar impact on her ability to meet the physical, emotional and psychological needs of any child in her care. MY accepts that her daughter E will have witnessed her mother in a state of extreme distress and anxiety.
  
47. The youngest of the subject children F was a year old at the time the X children made the complaints about her father FZ in July 2020 which led to the private law proceedings and 1 ½ at the relevant date of 20<sup>th</sup> January 2021. Her mother MX and father FZ accept that the s31 threshold is crossed in relation to F on the basis of risk of harm and that she was at risk of significant harm and that that risk of harm is attributable to the care then being given to them or likely to be given to them by their parent or step-parent not being what it would be reasonable to expect a parent to give to their child. MX accepts that the harm suffered by F and likelihood of harm suffered related to sexual, physical harm and emotional harm and the impairment of her social, emotional and psychological development.
  
48. FZ accepts that the harm suffered by F and the likelihood of harm suffered related to emotional harm and the impairment of her social, emotional and psychological development, he does not accept that the definition of harm in relation to F should include sexual and physical harm. As a result of positive drug tests FZ accepts that he used amphetamine fairly regularly during the 195 days prior to 29<sup>th</sup> January 2021 and that it is likely to have impaired his ability to meet the emotional, psychological and physical needs of any child in his day to day care. FZ was avoidant, dissembled and was at times aggressive when he gave oral evidence; he tried to minimise and dismiss the results of the tests and would only accept that he had been abusing drugs during the time for which the Court has test results; this is contrary to the evidence of members of his own family who described FZ's amphetamine abuse as going back many years

#### **Facts and issues to be Determined.**

49. The facts about which the local authority seek the determination of the Court have been summarised on their behalf as follows including the denials of the relevant parties.
  - i) Whether FZ has behaved in a coercive and controlling manner and whether he has been physically and emotionally abusive towards MX and the X children, behaviour about which all the X children (including A at first) complained. Both MX and FZ deny that FZ was physically and emotionally abusive to MX and in respect of A say that FZ grabbed A by the shoulders in an attempt to restrain A who tried to kick MX when she was pregnant.

- ii) Whether there was an incident with a shoe-rack thrown by FZ at MX which hit A as particularised by the local authority and or if it was an accident as it fell from the attic as claimed by FZ.
  - iii) Whether the name calling of C (a little boy of 9 at the time) by FZ was limited as FZ accepts to calling C gay and only in jest or whether it extended to calling C “*a cunt*” or “*a gay cunt.*”
  - iv) Whether the couple (MX and FZ) had been screaming at each other and/or the children or whether it was the been normal shouting and arguing between the couple but never to the extent of screaming.
  - v) Whether MZ did throw objects at MX breaking them during arguments; or whether that was in fact only FX who had done so.
  - vi) Whether MX and FZ have, as alleged by the local authority, prioritised their relationship above the emotional and physical needs of the children; they say they did not.
  - vii) Whether MX, FX, MY and FZ have failed to protect the children in this case from an “argument by proxy”. To some extent this has been accepted by MX, FX and MY as can be seen above.
50. The acrimony between FX and MY and MX and FX along with members of the maternal family in the private law proceedings and their responses to the allegations of sexual activity made primarily by B about A have been alluded to above. It falls to the Court to determine the extent to which the undoubtedly high levels of antagonism and the conflict between the adults in the two families produced an environment which might influenced or lead to allegations being made in addition to the level of supervision and care by the relevant adults of the children such that these allegations could be made; and the adults responses to the allegations. That is whether their responses were reasonable and child-centred or whether the allegations were inflated and/or used as a weapon in the adults’ conflict.
51. In addition there is a need to consider the amount or level of distress caused to the children by the acrimony between the adults. This Court has already alluded to the fact that all the relevant adults deny they were aware of any sexual activity at the time when it is alleged to have taken place. FX and MY said that they nevertheless believed the allegations, neither has provided a reasons for their belief other than problematic and difficult behaviour of A in the past; it is of note that although there had been difficulties with A’s behaviour these did not include sexualised behaviour. MX’s position has changed it is now that having considered all the evidence she cannot chose between her two children A and B. The local authority reiterated in their closing submissions that it does not seek any findings in respect of conduct or behaviour against any of the children in relation to alleged sexual activity and as set out above the Court has decided that it is not necessary nor proportionate given the sate of the evidence as a whole to determine whether that sexual activity did take place.

## Law

52. There is no significant dispute as to the law which must apply in any fact-finding trial. This is public law application pursuant to s 31 CA 1989 and as such the burden of proof is on the applicant local authority which brings the case and prove its case to the requisite standard of proof. It is not disputed that s31 CA 1989 threshold criteria are met. As in all civil cases that standard is the balance of probabilities as considered and set out in the seminal case of *Re B (Care Proceedings: Standard of Proof)* [2008] 2 FLR 141. I have in mind the words of Baroness Hale at paragraphs 31, 32, 70 & 71; neither the seriousness of the allegations nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts; any inherent probability is simply one matter to be taken into account, where relevant, in deciding where the truth lies. In this case the Applicant seeks findings of fact (in addition to the concession and admissions made by the parties) as set out in the preceding paragraphs.
53. I remind myself of the words of Lord Hoffman at [2] in *Re: B* [supra] that the balance of probabilities is a binary system *"If a legal rule requires a fact to be proved ("a fact in issue"), a Judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are nought and one. The fact either happened or it did not. If a Tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, the value of nought is returned and the fact is treated as not having happened. If it does discharge it, the value of one is returned and the fact is treated as having happened."*
54. It is a matter of well established law that a court can only determine issues of fact based on evidence and not on suspicion or on speculation as put by Munby LJ (as he then was) in *Re: A (A Child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12; *"It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation."* In *Re X (Children)* [2015] EWHC 3651 (Fam) at [22] Sir James Munby P said, *"First, that the legal concept of proof on a balance of probabilities "must be applied with common sense", as Lord Brandon of Oakbrook said in The Popi M, Rhesa Shipping Co SA v Edmunds, Rhesa Shipping Co SA v Fenton Insurance Co Ltd [1985] 1 WLR 948, 956."* He continued, [23] *"Secondly, that the court can have regard to the inherent probabilities: see Lady Hale in In re B (Children) (Care Proceedings: Standard of Proof) (CAFCASS intervening) [2008] UKHL 35, [2009] 1 AC 11, para 31. But this does not affect the legal standard of proof, as Lord Hoffmann emphasised in the same case (para 15):*

*'There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.'*"

55. There can be no reversal of the burden of proof, it is the burden of the local authority to prove the facts it alleges to the requisite standard, and the burden does not shift to the adults against whom findings are sought, and I must guard against the risk of reversal of the burden by giving too much weight to either respondent's inability to provide an explanation for any of the allegations made against them. Nonetheless the absence of any reasonable explanation can be taken into account as a matter of common sense. I have in mind the decision in *Re M (Fact-finding: Burden of Proof)* [2013] 2 FLR 874 as well as the authorities and guidance to which I have already referred.
56. This Court must survey and consider all the evidence before it and take an overview of that evidence as a whole in reaching its conclusions; in such case inevitably it is a wide canvas, including the evidence contained in records, recordings and other documents and the evidence given on by and on behalf of the respondents in this case and I must consider and assess the weight and credibility of each part of the evidence and keep mind the words of Butler-Sloss P in *Re T<sup>2</sup>*: "*Evidence cannot be evaluated and assessed in separate compartments. A Judge in these difficult cases has to have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to a conclusion whether the case put forward by the Local Authority has been made out to the appropriate standard of proof*".
57. Following the judgment Sir James Munby in *Re A* [supra] I can properly make findings based on evidence including inferences to be drawn from the facts that are conceded or prove to the requisite standard and conclusions can be drawn from a series of facts or circumstances taken together for which there is no alternative plausible explanation. The wider canvas which this Court is to consider in this case includes what is known of the life of the parents and the children which including their responses to professionals and to the police; their evidence, credibility and reliability will be subject to careful assessment; an assessment and analysis which is to be found in the body and conclusions of this judgment. In the decision of *Re A (Children)* [2018] EWCA Civ 1718, the Court of Appeal emphasised the overarching importance, when determining whether or not the case has been proved to the requisite standard, of the court standing back from the case to consider the whole picture and asking itself the ultimate question of whether that which is alleged is more likely than not to be true.
58. In reaching any conclusion about credibility of the witnesses, including FX, MX, MY and FZ I direct myself regarding any lies which as set out in *R v Lucas (Ruth)* [1981] QB 720. When any conclusion is reached that a witness is lying or not telling the truth about any matter, point or issue it does not follow that she or he is lying or being untruthful about any other matter, point or issue.<sup>3</sup> I have to direct myself that the fact that any witness has told lies is not of itself proof that they have lied about everything nor can it form such proof, in and of itself, of the truth of any allegation or complaint, or that that witness has perpetrated the acts or omissions complained of; and the fact that witnesses can and do lie; out of fear, embarrassment, shame or ignorance and for many other reasons.

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<sup>2</sup> [2004] 2 FLR 838; [33]

<sup>3</sup> *Re H-C* [2016] EWCA Civ 139



59. For further analysis of the case law I refer to the decision of Baker J (as he then was) and the pellucid guidance in his judgment in *Re JS* [2012] EWHC 1370 and referred to *In the matter of L and M (children)* [2013] EWHC 1569 (Fam) as *Re L and M* was expressly approved by the President of the Family Division in *Re Y* [2016] EWHC 509. The guidance as it applies in this case is as follows “[46] *First, the burden of proof lies at all times with the local authority. [47] Secondly, the standard of proof is the balance of probabilities. [48] Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation. I have borne this principle in mind throughout this hearing. [49] Fourthly, when considering [allegations of causing death] the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.*”
60. As I was reminded in the comprehensive and helpful written submissions and exposition of the law made by Ms Henke on behalf the local authority that family proceedings are subject to the same rigorous evidential and forensic principles that govern all civil proceedings and was reminded of the case *In Re A (Application for Care and Placement Orders: Local Authority Failings); sub nom Darlington Borough Council v M, F, GM and GF* [2016] 1 FLR 1, FD, *Re J (A Child)* [2015] EWCA Civ 222 and the gravamen as set out in the decisions.
61. In particular that “*it is vital that Local Authorities, and, even more importantly, Judges, bear in mind that nearly all parents will be imperfect in some way or other... It must be demonstrated by the Local Authority, that by reason of one or more of those facts, the child has suffered or is at risk of suffering significant harm;*” and of the reiteration that judges must take all of the evidence into account and examine it overall. The quasi-inquisitorial nature of family care proceedings mean that the factual basis on which the threshold is satisfied is a matter for the judge and not the parties and this Court is not confined to those matters which the local authority seeks to prove. But where the Court wishes to make findings of fact not contained within the schedule or sought by the authority, following the principles set out above I can only do so if those findings are securely founded on evidence and that the fairness of the fact-finding process is not compromised (*Re G and B (Fact-Finding Hearing)* [2009] 1 FLR 1145 and *Re J-L (Findings of Fact: Schedule of Allegations)* [2013] 1 FLR 1240).
62. As I was reminded by the local authority’s written submissions on the law the evidence of the parents, carers and family members is of the utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability; and referred to the cases of *Gestmin SGPS SA v Credit Suisse (UK) Ltd Anor* [2013] EWHC 3560 (Comm) at [15] to [21]. The need for care with witness demeanour as indicative of credibility as highlighted by the Court of Appeal in *Sri Lanka v. the Secretary of State for the Home Department* [2018] EWCA Civ 1391 in observing that it is now recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness's demeanour as to the likelihood that the witness is telling the truth. And I am reminded that I should bear in mind the observations of Macur LJ in *Re M (Children)* [2013] EWCA Civ 1147 at [11] and [12]. Most recently reinforced in *Re. A, B and C*

(*Children*) [2021] EWCA 451 with reference to the directions given to juries “*a jury would be firmly told and for good reason that the presence or absence of emotion or distress when giving evidence is not a good indication of whether a person is telling the truth or not*”. There is only one objective and reliable approach which is to focus on the content of the testimony and to consider whether it is consistent with other evidence including evidence of what the witness has said on other occasions and/or with known or probable facts. I have endeavoured to do so in considering the evidence of each witness both written and oral as before this Court.

## **Evidence**

63. In addition to the oral evidence given in person by the four principal adult parties MX, FX, MY and FZ the court heard from numerous other witnesses including members of the maternal family, members of FZ’s family, social workers, an educational welfare officer and from the police (for detail see below). The court watched videocam footage or images worn by first response officers on 6<sup>th</sup> July 2020. There is an extensive bundle of documents, statements and records referred to during the trial and read and considered by this Court. It would be an unnecessarily lengthy and unwieldy process to set out, enumerate and rehearse all the evidence in this judgment. I shall refer to the specific and salient evidence which forms the basis of the Court’s reasoning and decisions in respect of the findings I have made, but as considered against the totality of the evidence before this court.
64. The X Children: A. Part of the evidence consists of what has been said by the children interviewed in their ABE interviews (the interviewer gave evidence to the Court separately) or reported to have been said by the children. The complaints the X children made to MY and FX are disputed by MX and FZ but not the fact that complaints were made. I shall return to this below. I start by considering each child in turn starting with the eldest A, who as I have already observed, outwardly at least, has suffered the most as a result of the proceedings brought first by his parents and necessarily continued by the Applicant local authority. A is now 16 years old. His Guardian described him as a young man who is incredibly vulnerable and lacking in familial support; she describes how A has lost everything since the allegations were made (by B) and the proceedings started. He has lost his home, he has no contact with his father; neither A nor his father wanted any contact at the time of the trial. It is to be hoped that there can be some professional support put in place to rebuild some kind of relationship and contact between father and son.
65. A has had an apparently difficult and damaging childhood, he missed out on schooling and has had what were perceived to be behavioural difficulties from a young age, such were the difficulties A encountered he developed language impairment. Dr P the clinical and forensic psychologist who assessed him highlighted A’s missed schooling and reported that his specific language impairment seems to have resolved but that A has a residual stammer. He is not diagnosed with any particular mental health difficulty but is very sensitive to perceived slights. Nothing in Dr P’s report or her later answers to subsequent questions posed suggests he is not able to express himself. As a vulnerable and damaged young person A was assessed by Triangle regarding the need for an intermediary should he have given evidence and but no such difficulty was

identified in respect of his ability to express himself. A is nonetheless a vulnerable young man who has found himself isolated and cut adrift from his family.

66. The X Children: B. B is now almost 14 years old. She was only 12 years old in July 2020 when the precipitating events took place. B is described by Dr D, the clinical psychologist who assessed her, as presenting with significant psychological difficulties, including depression, anxiety and the symptoms of trauma. B feels angry about A and is frustrated with the police for not prosecuting him. According to Dr D B exhibits an ambivalent attachment style when she feels overwhelmed and her behaviour serves to communicate her distress, what is referred to more colloquially as acting out.
67. B has a borderline learning disability, it is a matter of common sense that this disability this will not have been assisted by missing the entirety of her first year at secondary school. As accepted by MX this took place while she was in the day to day care of her mother. While the period between March and the end of the summer term in 2020 was during the first Covid lockdown the fact that B wasn't even enrolled meant that she was not in receipt of any educational support during the latter part of the school year. I accept that, as submitted by the local authority, and set out in the documentary evidence and records, MX neglected to exert any or sufficient effort in getting her daughter enrolled in to a secondary school. While, as she explained to the Court in her oral evidence, MX had the school's decision not to give B a place she was less than frank for not only had she applied late for a place for B, MX then omitted to tell me, when she had the opportunity to do so, that she did not even manage to take the trouble to attend the appeal itself. It is likely that MX found it useful to have B available to assist with child care.
68. The X Children: C & D. C is now 11 years old, and was only 9 at the time the incidents leading to the private law proceedings occurred. Dr D, the clinical psychologist who assessed B as well as C and D, assessed C as being likely to have experienced parenting from carers that were not able to consistently meet his needs resulting in "*quite avoidant and independent attachment style*". Touchingly, when at home C had tried hard to look after his younger brother D. D himself is now 7 years old, he would have been just over 6 when the private law proceedings started. Dr D, reported that D spoke about being afraid of FZ (this is consistent with his previous reported complaints) and that D repeatedly recalled events which had been traumatic for him.
69. The X/Z child: F. F is now 2 ½. In July 2020 she would have been a baby of 12 months. As a baby then and a toddler now F was and is vulnerable by reason of her infancy and her total dependency on the adults around her to keep her safe and secure. It is now accepted that infants are affected by the milieu in which they are being raised and that domestic abuse is harmful for children of any age whether or not it is directed at them.
70. The Harm suffered by the X children: attributable to MX. In respect of MX's own evidence and her ability to protect the children within the home, as we see above FX has accepted that he was unable to cope with A as he was growing up. The evidence is that FX would shout at A and lost his temper with him. According to other family members FX was heard to say that he hated A within the child's hearing. There were occasions when FX would walk out of the home and on one occasion it is said that he threw A's computer down the stairs. The manner in which A was parented at home particularly by his father inevitably caused the boy to feel that he was treated differently and less favourably than his siblings. Indeed it would seem that that was, in fact, the

case. MX would have been well aware of how her eldest child was being treated by his father but did little of any thing to stop it or ameliorate its effect on the boy. This was the unchallenged written evidence of HM (social worker) whose report corroborates what was MX's own evidence that during the marriage FX had shouted at A and had on one occasion threw A's computer down the stairs.

71. MX also said that FX had being using cannabis. Nonetheless despite that MX had done nothing either to take steps to she find out if he was still using cannabis nor to ensure that FX did not continue to treat A that way after they had separated before the children went to stay with him. Indeed MX did not seem to see any reason to do so, although she did tell me that she had sufficient confidence in MY as a parent to feel that she (MY) would make sure the children were properly looked after. From this evidence I conclude that not only did MX have no concerns about MY as a care-giver, she also considered consistently shouting at children as part and parcel of reasonable parenting; she had, after all, tolerated it for years. This is a matter to which I shall return.
72. From the evidence I heard and read it is abundantly clear that both A and B suffered significant educational harm attributable to both their parents MX and FX and I so find. FX is not excused from his responsibility to both in respect of their educational needs by leaving the responsibility to MX. The long-term effects of this deficit to their schooling are incalculable. Both A and B will require specialist help if that deficit is to be made up and they are to be allowed the opportunity to meet their potential as young people and later as adults.
73. From the oral evidence to this Court of MX and FZ themselves it is clear that it was very shortly, a period of no more than several weeks their father FX left the family home, that MX allowed FZ to move in. It matters little from the children's position whether he arrived at first for a visit, he had moved in and effectively replaced their father; he certainly took on the role of parent almost immediately and was permitted, if not encouraged, to do so by their mother. MX's evidence was that FX had visited once and on the second occasion stayed overnight and met the children. As submitted by the local authority this was without any consideration for the children's needs nor their welfare, such as the need for them to come to terms with their parents' separation and proper introduction to a de facto step-father, let alone permitting *herself* to find out what kind of a man he was and what it might be like to live with him. Even on her own evidence, having come to stay overnight FX had in fact, from the children's viewpoint, moved into the family home.
74. The local authority are quite right to submit that MX allowed FZ to live with her children knowing very little about him, she had only met him online when playing on X-box; thus she can have had no real first-hand knowledge of his character and temperament. It is fair to conclude that she had little or nothing by way of background information or her even own experience of having been in a relationship with him on which to base her decision, a decision which would have profound effects on her children. Nor was she in a position properly or adequately to judge whether he could deal with this fundamental change for the children in a sensitive and child-centred way. She had no knowledge of his abilities as a parent or care-giver and still less about whether might FZ pose a risk to her children. It is self-evident that MX put her own needs for a relationship with FZ before her children's emotional, psychological, and physical needs.

75. According to the children based on what they have told their father, MY, police officers and others, once in their home FZ behaved in a controlling, coercive and abusive manner towards them and their mother. The children have described abusive behaviour on the part of FZ of which was harmful to each of them individually. Almost immediately, it would seem from their accounts, FZ insisted on imposing “routines” and the children being quiet. In their words he was very strict for which the more apposite word is controlling.
76. FZ was also said to have been physically abusive to MX and to A in particular (it is denied by FZ and by MX). The complaints including an incident when FZ threw a shoe rack at A and that MX had been in the way and was hit causing her to cut her finger. The abusive behaviour of MZ complained of included FZ physically assaulting A by pushing his head against a wall and by grabbing A by the shoulders and pushing him through a door which opened onto a bed, on to which he fell. The children said that they had seen FZ’s ill-treatment of A. The children heard MZ shouting at their mother and her screaming. They saw him try to strangle her. They saw him smash household items, including a plate which smashed by the baby’s cot. They have experienced emotionally unpredictable and volatile behaviour on the part of FZ including threats to leave and to kill himself. I shall return my findings in respect of FZ’s behaviour below, but even if untrue the fact that all the children have complained about it, and to more than one person, gives rise to concerns both about why they would feel compelled to do so and demonstrates that their mother was emotionally unavailable and they perceived her as being unable to protect them.
77. In an extension of her being unavailable to protect or support her children emotionally, MX and FZ have, in plain terms, called B, C and D liars. At no point in her evidence has MX demonstrated any insight or concern as to why her children might be telling what she has said are lies. Throughout MX has continued to support FZ’s case before her children to the extent that she has said that A’s complaints of physical assault by FZ were based on A’s behaviour and a misinterpretation of MZ’s actions which were acts of restraint thus placing the blame and responsibility on to her vulnerable son. Even if what she claims were true neither she nor FZ have demonstrated concern for A by expressing real concern for the welfare of a vulnerable child who has felt driven to make the complaints in the first place. As correctly submitted by the local authority the response of the children’s mother and her partner “*has been anything but child focused.*” Both MX and FZ have demonstrably and repeatedly not listened to what the children are saying. Even if what the children have complained of is not entirely true or accurate MX has chosen to put her own need to maintain a relationship with FZ before the need of her own children for their mother to make herself emotionally available to them. To that extent at the very least MX has failed to protect her children; instead she has chosen or felt forced to support FZ and to nurture and protect him.
78. This failure on the part of MX to protect and support the children, has extended to the maternal family who have endeavoured to support her by taking her side presumably in an attempt to ensure the children live with MX and to drive a wedge between the children and their father FX. The maternal family’s seemingly unconditional support for MX, and by extension FZ, has consisted of taking up, echoing and amplifying her views, at no point have they given her conciliatory advice nor have they demonstrated that they are able to taken into account or recognise that these are the children of both parents and that as such they will have feelings of love and loyalty to FX as well as to

their mother. In their partisan approach and ill-concealed, untempered hostility towards FZ and MY they have extended to include another child (E). The maternal family's antagonistic, if not aggressive, approach, which included hostility in respect the local authority and its social workers has, as I have already observed, deflected attention from the problems within the MX/FZ household and obstructed the local authority in taking decisions and planning for the children's needs to be met. The Court has noted that when children were placed within the extended families they were caused further harm and distress. The unquestioning adherence to the MX/ FX case affected the maternal family's ability to give objective or reasoned evidence to the court.

79. The Harm suffered by the X children: attributable to FX. Whatever may or may not have occurred between A and B of a sexual nature it form the evidence it appears that both MX and FX failed to provide their older two children who were either adolescent or approaching adolescence with any guidance as to sex and sexual relationships; advice about the "facts of life" that would support and enable them to keep themselves safe and encourage healthy relationships. FX accepted that he had failed to do so leaving it to their schools. As previously observed B lost out on her first year at secondary school at as just as she would have been sexually maturing, this was a fundamental abdication of parental responsibility in the broadest sense of that term. B has suffered significant harm as a result, at an emotionally difficult time in her life she has been left to explore and educate herself, if she has turned to the older (and it must be said better informed) E for information and advice it is hardly surprising; they are still children and neither is to be blamed for doing what all young people do. Earlier B's apparent confusion and about matters sexual has been demonstrated in the apparently unfounded allegation she was reported to have made in school in 2018.
80. As we have seen as a consequence of the sexual complaints B made about A his father entirely rejected him, something that both A and B are aware of and in respect of B her feelings about that remain to be explored and resolved. I find that the position that B has been placed in by the polarisation of views of her parents and in the extended family can only have meant that she has no choice but to cling to what she said for fear of her being rejected as A has been. For she can see and has experienced the consequence of their parents' behaviour which has fractured the sibling group with A alone and adrift on one side and B, C and D on the other. Both their parents, FX and their mother aided and abetted by her family and the self-serving FZ, failed to take steps to ameliorate the damage to their children's relationships.
81. The children have been lost in the conflict and self-interest of the adults and have suffered additional harm as a result of their parents' behaviour. Not least the children have suffered a number of moves some of which can only have caused distress if not trauma. A first moved on 21 July 2020 when, following the allegations made by B, he was taken by his father to his paternal grandfather's home. Just eight days later on 29<sup>th</sup> July 2020 A was taken by his grandfather to the police station for a police interview, his grandfather left him there without warning to A. The police arranged for him to stay with the maternal grandparents. This placement lasted less than four months when on 6<sup>th</sup> November 2020 they said they said they were unable to cope and placed A with his aunt and uncle who in turn could not cope within a week and the local authority placed him back with his mother and FZ on 13<sup>th</sup> November 2020. I do not consider any of these placements to have been in A's best interest. The last in particular notwithstanding the fact that the local authority were dealing with another abrupt end to a family

placement, and the fact that A wanted to go home. In fact A faced a further removal not long afterwards because of confirmation of FZ's amphetamine abuse and "*lack of openness and honesty*" about it.

82. B, C and D remained with their father and MY until 12<sup>th</sup> August 2020 when, because of the allegations made by maternal family about MY and E, they were placed with their maternal aunt and uncle for two months. On 12<sup>th</sup> October 2020 their uncle (to use the term employed by the local authority in its submissions which has the virtue of being plain and simple) dumped them at a contact centre where they were having contact with their mother. The local authority had to make emergency arrangements to place the children with FX and MY again before the intended preparatory work could be done. The children remained with their father until 26<sup>th</sup> February 2021 (by this time there were public law proceedings) when with the court's sanction they were moved to foster care because of MY's use of amphetamine and her failure along with FX to be honest with the local authority; she, like he, only accepted it on receipt of drug testing. This failure led to the public law proceedings in respect of E.
83. MY's daughter E. E is now 14 and was nearly 13 in July 2020. According to the psychologist who assessed her [KR] E presented with some emotional and mental health issues and symptoms of post-traumatic stress. Distressingly for E she self-harms, has suicidal ideation and feelings of guilt. E is described as having an insecure fearful attachment style which is likely to have been partially brought about by past experiences of her mother's mental health issues, this was accepted by MY in her oral evidence. MY's concession are set out above.

#### **The evidence regarding FZ from the children**

84. FZ has denied that complaints made about him in respect of domestic abuse and abusive behaviour towards the children have any truthful foundation. I shall now consider the evidence, including the ABE interviews. Chronologically the first complaint, by A, took place on 30<sup>th</sup> September 2019 when A wrote a note in school that FZ had pushed the side of his head against the wall. The note recalled previous incidents when FZ had gripped A's arms. A said that that his SD [stepdad] drinks everyday which he (A) thought could be through FZ's frustration at not seeing his own kids. The same day it is recorded that MX was spoken to: MX claimed ignorance of this conversation, but it is clear from the school record that she was told and that she had said that the allegation was false.
85. I heard from the EWO [Mr O] about what had happened that day, what A has said and what happened when A was taken home. Mr O has no discernible reason to falsify evidence or to lie about what happened. It is his evidence that on 6<sup>th</sup> March 2020 A said "*another beating for me*" and confirmed that he meant that his stepfather would give him a beating when he got home. Mr O was still able to recall what had happened when he took A home, and described how FZ had shouted at A who paled and looked frightened. Mr O's oral evidence was measured and he took noticeable care not to say anything about which he was not sure. I accept his evidence. It is a matter of record and concern that by 9<sup>th</sup> March 2020 (the following Monday) A said at school that he had never made the reported remarks to Mr O. Not that he was wrong or mistaken in what he said but that he had not said anything. It cannot be a coincidence that A denied saying anything after he had been at home with FZ and his mother over the weekend, and I accept the submission of the local authority that in his position A it is more probable

than not that A felt had no choice but to deny he ever said what he did, and that his denial is most probably the result of pressure he felt at home.

86. These complaints and the EWO witnessing A's reception at home by FZ they predated the major dispute and schism between the adults in this case which began in July 2020. Evidentially they are significant because they are congruent with, and to some extent they corroborate, what the X children said later in respect of FZ's abusive behaviour, when they did is set out above. The fact that A and B chose to make their complaints to MY is unsurprising, and should not have been so to MX given that MX considered MY to be a competent and caring person who she could trust to look after the children. I shall return to MY and her evidence in more detail below but agree with the observations made by counsel that MY, in evidence, was the most child-centred.
87. MY's oral evidence included a description of how she had taken notes at the time on an envelope as the children had told her about MZ abusive behaviour towards them and towards their mother. MY told me that she had later, but well before the police were summoned, written them up more neatly on a piece of paper which was seen in court and forms part of the court bundle. I entirely accept the local authority's submission that this was a natural process. I do not consider anything sinister in her actions in that respect and cross-examination along the lines that would be used when questioning a professional witness such as a social worker or police officer in respect of note taking and keeping was unhelpful and largely inappropriate. In line with MY's evidence in general and as a whole I found her descriptions to be open and the details how the children A and B came to her in the kitchen of her house that weekend and started to blurt out what had been happening in their mother's home to be credible and compelling.
88. The two police officers who were dispatched to MY's home on 6<sup>th</sup> July 2020 PC Shepherd and PC Webborn were first response officers who did so in response to MX's request for police assistance. They were there (as was confirmed in later evidence) to prevent a breach of the peace and not as part of an investigative team from the child protection unit investigating allegations of child or domestic abuse. As I have alluded to above they had turned on their body worn videorecorders (body-cam). The recording of what the children said to them, how they said it and when they said it in terms of the events of that morning are all accurately captured. This Court was able to evaluate what the children said on that occasion along with their genuine distress (one of the children had been crying and was being comforted by a visiting neighbour) and their complaints. Those complaints were congruent with what was recorded by MY. I do not accept any suggestion that the children were being coached or overborne by their father (or MY) at the time to be consistent with what could be seen on the bodycam footage. A full explanation was given as to why there was another woman present; she was a neighbour of MY's who MY was supporting at the time with the approval and at the request of social services. The fact that MY had been allotted that task is in keeping with the assessment made by MX that MY could be trusted care for her children.
89. DCs Dallas and Smith (from the CP unit) went to MY's home to speak to the children about their complaints on 7<sup>th</sup> July 2020. What the children said on that occasion is set out in DC Dallas' statement and in the notes made at that time. There is no reason to dismiss that evidence. It is consistent with what the children had told MY. Indeed since those initial complaints were made B, C and D have been all been consistent in their accounts. B, C and D continued to be consistent in their accounts and complaints about



FZ even after a stay of several months, between August and October 2020 with their maternal uncle and aunt Mr and Mrs S.

90. These are quite different individual children of differing ages and abilities and I find the assertion that they had or have been rehearsed to the extent that they are able, or would want to, maintain fabricated accounts is highly unlikely, and I reject it. Just as I reject the claims by MX, FZ and the wider maternal family that the real reason the children have been “put up” to make their complaints repeatedly is to get a bigger house and more state benefits for FX. There is no objective evidence to support this as a credible motivation on FX’s part, still less on MY’s. I am disturbed by the adult family members continued attempts to blame another child, namely E and can see no reason why she and her mother MY would engage in such a conspiracy which would bring them no benefit whatsoever. Moreover the decision taken by MX, FZ and the maternal family to attempt to blame and vilify a child is, I find, evidence of their inability to consider the needs and welfare of children in general
91. Their initial accounts are repeated and corroborated by the children, B, C and D’s evidence to their highly experienced interviewer (Mr Marlow) in the ABE interviews recorded on 7<sup>th</sup> April 2021. These interviews took place pursuant to an order of Mr Justice Francis on 17<sup>th</sup> March 2021 to which no party raised an objection. As I have said the ABE interviews were conducted by Mr Marlow, who, as was conceded in the course during the trial, is an expert in this field and who conducted the interviews appropriately and in accordance with ABE guidance and best practice. The three children attended the police station separately; by then they had been in foster care since 26<sup>th</sup> February 2021 with B being separately placed. In the video-interviews B, C and D all clearly understood the difference between truth and lies and each, in their turn confirmed that they had not been told by anyone to make allegations against MZ. I have considered the interviews and find that the children each responded to the questions put in an age-appropriate way, that is to say they replied in the manner expected of a child or their respective ages. I find that their evidence was credible and compelling, their was no embellishment or exaggeration and their evidence about their home life was plain, unadorned and straightforward. It was also consistent with what they had said before.
92. It is unnecessary to rehearse their evidence in full in this judgment. The detail that they gave was consistent both with what they had said before and what they were describing during their interview. The children spoke of being frightened and scared; C spoke of being scared; D told of his “*mammy crying and daddy shouting*”; B gives more detail of the shoe-rack incident (see below) including her fear as it happened. There was more than one description of FZ shouting and of MX crying, C spoke of an occasion when his “*Mammy and [FZ]*” were arguing at the kitchen sink, FZ was shouting at her to stop it and “*just screaming at Mammy. Mammy started crying.*” During her interview B described FZ strangling her mother. B was asked “*What happened next?*” in her interview and said “*...I kept hearing Mummy saying No downstairs in the kitchen...and I was scared and worried about what was going on*”.
93. I find the accounts given by the children to be detailed, and when considered as a whole reliable and credible.
94. Although A later resiled in some ways from his complaints about FZ, B said in her ABE interview that FZ had whacked A’s head on the wall, which is entirely congruent with

what A himself had said in September 2019. B, C and D all gave their accounts of FZ throwing a shoe-rack at B and their mother cutting her finger on it when she intercepted it; it was clearly an incident that had stuck in the children's memories, I have already referred to B's fear at the time. B and D both told their interviewer about the baby (F) crying when her parents argue it clearly worried them. They spoke of MZ throwing and breaking objects and described how one of the plates he broke smashed next to the baby's cot. The complaints about FZ's verbal abuse of C calling him "gay", (the complaints had extended to a "cunt" a "gay cunt") and C being upset by it are repeated in the ABE interviews. As are FZ threats to leave taking F with him to move to England and threatening to go and jump off a bridge; described by both B and D. The children's evidence in their ABE interviews is undoubtedly compelling but it is also credible both being consistent with their previous complaints and in the corroboration it provides of each other's account.

95. As to the three younger children's accounts of FZ abuse of A it is corroborated by what A initially complained of himself. He had given a detailed account to DC Dallas on 7<sup>th</sup> July 2020 of being grabbed by FZ by both shoulders and being pushed against a door which opened whereupon he fell onto the bed and bruised his arm. A had given another account to LG (social worker) in March 2021 of FZ holding him down and squeezing his shoulders and pushing him over; a complaint A has not retracted. Initially A complained about how strict FZ was in their home; these early complaints by A are corroborated by the other children in interview, for example C gave an account of his bed creaking which resulted in FZ being angry and shouting. Since November 2020 A has said that he sees things differently to his siblings that he had needed to be treated the way he was treated by FZ. I cannot ignore the context of A's partial retractions or him seeking to excuse FZ's behaviour, A was desperate to go home, he had been expelled from homes by his father, his paternal grandfather, his maternal grandparents and his maternal uncle and aunt. It is of considerable concern to the Court that A was left feeling that he deserved to be treated in this way and I have little doubt that he would have said almost anything and blame himself entirely in order to go home.
96. As can be seen above excusing FZ's behaviour was not limited to A as his mother has given the same or similar explanation that FZ was "*strict*" and had imposed much needed "*routines*" within the household. Even if true, and here is scant, if any evidence, setting out how these "*routines*" were beneficial to the children, FZ is not their parent. As far as the children were, and indeed this Court is, concerned FZ was a virtual stranger who had moved in a very short time after their parents separated and took over; within weeks he was imposing his rules in the home. Not only had their mother failed in the most basic of ways to prepare her children for someone moving in she then allowed him to set to the household and take control. His rules, like his behaviour, were controlling, harsh and intimidating. A described to the police in interview in August 2020 that FZ did not like it when the children made a noise. This is consistent with what C has said (see above about the bed creaking) and with what D (who was still a little boy at the time) told his guardian when he said that FZ was very strict and shouted.
97. As to FZ coercive behaviour the maternal grandmother [Mrs M] gave oral evidence, which I accept as accurate, of a classic example, of threatened self-harm when FZ told her he might as well jump off a bridge because A would not shower when asked. According to the children they had experienced and witnessed FZ was man who was strict, who shouted, who imposed himself and wanted his own way and became angry

when he didn't get it, who was verbally abusive, could be violent, was unpredictable and had physically assaulted A and their mother.

98. Were this view of FZ limited to the children alone their evidence would be credible, but it is made all the more believable by the evidence given with reluctance by members of FZ's own family and by his aggressive behaviour towards the social worker [LG] in February 2021 when his drug abuse became undeniable as a result of the hair strand analysis. FZ's two brothers RZ and SZ and their partners, albeit reluctantly, gave evidence about a man who had long been volatile, aggressive and habitually abused drugs. Their evidence was all the more compelling and believable when it became clear that their father (and FZ's father) had not wanted them to give any evidence and had threatened to break with them if they did: they did so largely because they felt an obligation to the children in this case. In that sense, and because they had nothing to gain and something to lose in their own family relationships, their evidence was altruistic which adds to its weight.
99. For reasons which I shall expand on below I did not find FZ to be a credible witness. The Court has carefully considered the children's evidence and their accounts and accepts it in respect of their complaints as made and set out above.

#### **Evidence of the Adult witnesses**

100. The evidence of MX. As is seen above MX, FX and MY have all made admission and concession in particular accepting that the s31 CA 1989 threshold is crossed, but the finding sought go further than those concession and the court has to consider their evidence in respect of their parenting and the harm caused to the children. MX's concessions were at odds with her oral evidence particularly that evidence concerning FZ. The local authority say that MX has effectively chosen to put FZ and her relationship with him before the welfare and best interests of her children. I agreed with that submission. In her oral evidence and under cross- examination MX was at pains to tell the court that her children's complaints about FZ were as a result of them being rehearsed by FX and MY. Right from the start on 6<sup>th</sup> July 2020 she had told the police PC Shepherd that the complaints were false. MX has singularly failed to reflect on or to consider the effects on the children for being called by their mother the dupes of their father and MY at best or liars at worst. MX's determined stance is to protect FZ and her oral evidence was to support him even after she was aware of the content of the ABE interviews of B, C and D.
101. Despite what her son A had told professionals as far back as September 2019 and 6<sup>th</sup> March 2020 (prior to any proceedings) MX has done nothing to show she had the least concern about what A was saying. She was aware too that in fact A had not retracted his complaints about FZ although he later mirrored her own excuses and was unable to offer any explanation as to why A had complained about FZ being physically abusive to him on in September 2019 or why he had told the EWO on 6<sup>th</sup> March 2020 "*another beating for me*", more significantly, regarding her priorities she showed no concern about what would drive A to say these things or take a more cautious approach to FZ in respect of A's safety, either in evidence or at the time those earlier complaints were made by her child.
102. The local authority assert that MX in her evidence "*attempted to argue a case for [FZ] rather than assist the court with reliable and credible evidence*". Having reviewed her

evidence with care I agree with that submission, indeed it has been MX's stance throughout prior to and during the hearing. In a singular example of her blinkered approach to any evidence which fails to support FZ she failed (in cross-examination) to accept the expert evidence about his regular amphetamine use. As a result her denial of any awareness that he was using amphetamine during the time he shared the home with her and their baby lacked credibility. I have accepted her own children's accounts of witnessing her crying and being abused by FZ yet despite, or possibly because of, his abusive treatment of her, she repeatedly adjusted her evidence to fit his case, both in her oral and written responses to the Court.

103. The local authority gave as an illustration of this adjustment in respect of an incident when she says FZ had to restrain A because he was trying to kick her when pregnant with F. This went from A trying to kick her in her earlier written responses and evidence; to (in September 2021) that A was actually kicking her (as has in FZ's response); to finally in oral her evidence that A wanted to kill the baby. At no point prior to her oral evidence had MX made such an allegation about A. I do not believe her oral evidence and find that it is an example of the lengths she is apparently willing to go to, to protect FZ. Her determination to put FZ first extended to her making serious and false allegations about her own son.
104. The Maternal Family's evidence. Although MX accepted in evidence that her children A, B, C and D had become "lost" in their parents' dispute, it was far from clear that she either accepted or had considered the role of her family both in the dispute and the harm caused to the children as a result of their partisan adherence to her cause. In fact the family mirror her own actions in taking FZ's side, ultimately against her own children. Although F remains with her mother she has already lost the opportunity to grow up with her older siblings around as a infant because of the way MX and FZ have behaved.
105. As part of the local authority's case the Court heard from, and read, the evidence of social workers including ED and MR whose evidence I accept, not least because there is no discernible reason for them to lie except to exculpate themselves from possible complaints, but even in that respect they were honest witnesses who accepted they had allowed themselves to become deflected from the children's needs by maternal family's conviction that the children were lying which had undermined their ability to make welfare based decisions. Their evidence was of hostility and over-involvement of the maternal family including the maternal uncle and aunt Mr and Mrs S and the maternal grandparents Mr and Mrs M. The wider family persistently pursued an agenda that that the children were lying and that those lies had originated with FX, MY and the child E. None of the adults who gave evidence to this Court had reflected on the effects on the children of their stance nor of the roles in exacerbating an already poisonous situation.
106. Nor did they accept the harm they might have inflicted on the children by their own actions. B, C and D were placed with Mr and Mrs S on 12<sup>th</sup> August 2020. From his oral evidence Mr S had not only exaggerated his role within these proceedings but chose to over-involve himself in the X parents' dispute. Based on scant evidence, with no relevant experience or qualifications Mr S sought to demonstrate to this Court that the complaints B made about A were as a result of E and MY's influence. There is an element of self-aggrandisement in Mr S behaviour as well as in his evidence; he and his wife chose to keep notes about the children while placed with them; but the notes kept were partial and amount to no more than an attempt to undermine the sexual

complaints B made and produce support for the family line that MY and E were behind them. In fact they prove evidence that their uncle and aunt were not listening to the children. Given this evidence and the oral evidence of Mr S it is more likely than not that Mr and Mrs S questioned the children to get support for MX's case.

107. Mr S's over-involvement is further set out in the evidence of DC Dallas; it is recorded that on 29<sup>th</sup> September 2020 Mr S telephoned the officer and advocated on behalf of FZ who at that time did not want the mother of his two older children to know about the sexual complaints B had made about her brother A. Later the next month, in October 2020, Mr S was present and in the background during a remote private law hearing before the District Judge. Given his compulsion to be involved in the proceedings I do not accept his explanation that he had just happened to enter MX's home when the hearing was taking place via the link. Even if it were by chance, which is unlikely, Mr S still should not have been present and MX should have seen to it that he was not, as was explained at the beginning of that and every remote hearing in clear and simple terms.
108. During that hearing the social worker had outlined that the plan for the children B, C and D was to work with MY and FX and for B, C and D to be placed with them once the work had taken place over a number of weeks. Despite the fact that he is not a parent and as such his role is peripheral Mr S's reaction to that plan was one of hostility as was recorded in ED's social work notes. Instead of listening to the advice of senior social workers and their pleas to think of the children he went ahead and took the children and their belongings to their supervised contact with their mother that day and refused to have them back to live with him and his wife pending a move home to their father. It was an obvious act of pique which entirely ignored the welfare of the children as the local authority no choice but to accelerate their placement plans. His actions were entirely at odds with his declared view that the children were at risk from FX and MY and demonstrated that the needs of the children were, as far as he was concerned, second to his need to pursue the family agenda and prove himself right.
109. I turn now to the maternal grandparents Mr and Mrs M, who on 6<sup>th</sup> November 2020 unilaterally placed A (who had been placed with them by the local authority) in Mr and Mrs S's care. Mrs M tried to convince the Court that this was a planned move sanctioned by social services; there is no other evidential support for her assertion which I reject as being untruthful. Given Mr S's previous behaviour in respect of the other three X children the local authority would not have placed A with him and his wife in any event. The truth is that they could not or would not cope with A and they had decided to place him with Mr and Mrs S. There is a contemporaneous running record of A's Edge of Care worker JW which is evidence of the unexpected and unauthorised nature of the move in its reporting of the WhatsApp message from Mrs M and the calls that day with Mr S and the social worker.
110. Being in the care of Mr and Mrs S had a demonstrably damaging effect on A; within days he had told his guardian that he saw things differently and that now that he had had time to think about it, he realised that FZ had been holding him down rather than hitting him. It cannot be coincidence with the knowledge of how partisan Mr S could be that this is the first time a change in A's account of how he was treated by FZ was recorded. A's account has now changed to support FZ's account, the maternal family's account. Troublingly A told his guardian of his new understanding in the presence of Mrs S. Given Mr S's conduct, his self-inflated role and intrusive involvement in the

case the Court can conclude on the balance of probabilities that it is more likely than not that it is in fact no coincidence that having been in Mr S's care for no more than five days A changed his account to fit with MX and FZ's, compounded by the fact that by then A wanted to return to live with home to live with them.

111. Mrs M has a very close, even entangled, relationship with her daughter MX, who on her own evidence she speaks to two or three times a day on the phone and whose house Mrs M calls into "*a few times a week.*" Mrs M had either chosen to ignore A telling her prior to July 2020 that FZ was shouting at the children or deliberately chose to minimise A's complaint in terms of the children's welfare. Either way she was not interested in their well-being; Mrs M dismissed it as FZ just getting them to shower or do something else.
112. In her oral evidence Mrs M accepted that she had heard FZ say that he might as well jump off a bridge when A would not do as he asked but sought to explain it away as just an expression and said that A would not have heard it. Taken in isolation this evidence would not necessarily be of particular relevance but given the fact that A had told her about FZ shouting and in the context of his abusive behaviour as a whole as his grandmother it is to be expected that she should have known it would have caused A distress. Moreover it is plain from her evidence, and although she tried to backtrack, that when A was living with them Mrs M had asked him about the allegations against FZ and that A had mentioned a shoe rack. A would have been bound to have been exposed to the maternal family line about what FZ's conduct and behaviour. In her evidence Mrs M was very careful about what she allowed herself to say; she had taken up her daughter's version of event and would not consider questions openly, and, in response to cross-examination on behalf of MY, she was dismissive, avoidant and dissembling in her responses. In his evidence Mr M followed the lead of his wife; the evidence he gave was noticeably similar to his wife's and he not on any relevant matter independent of the evidence she had given. Nonetheless Mrs M's evidence about the need to "*pull him up on it*", when FX was shouting at A was credible not least because she accepted that MX had been there sometimes; and it is noteworthy that the grandmother thought it necessary to step in and remonstrated with FX when the mother had not.
113. The evidence of FX. From his evidence FX appeared to have abdicated most of his responsibility as a parent to his wife, the local authority appositely used the word passive as the word would best describe his style of parenting. He did not seem to know what was happening to them, as in the case of B's schooling and the failure to enrol her in secondary school. He did not find out and did nothing about it. From his own evidence it was clear that did not occur to him that as a parent he had a responsibility to ensure his adolescent children were equipped with enough basic knowledge about sex to keep themselves safe. FX seemed almost incredulous that it was he as a parent and not their schools that should have had conversations with A and B about the "facts of life". He appeared unsurprised that when B then 12 was worried that she may be pregnant she had not brought that worry to him. FX would not venture an opinion or proffer an explanation as to why B was found standing in a window with her hands around her throat. His response was indeed passive, if not almost inert, and he did not express real worry or concern.
114. According to his evidence FX had not been aware of MY's amphetamine abuse despite living with her over a period when she took amphetamine daily and, on her own

evidence bought the drug from a dealer who came to their home. He had previously told the Initial Child Protection Case Conference (ICPCC) on 12<sup>th</sup> August 2020 that MY was anti-drugs and would not have them in the house. MY was quite open in her evidence about where she kept the drugs (on top of the kitchen cupboard) and about taking them daily even before the children went to school. While the local authority rightly express incredulity that in a two-bedroom house FX did not know, I am not so sure, there were five children there in July 2020 and I accept that MY was adroit in hiding what she was doing. It is less easy to accept that he was unaware of her drug associated mood swings, but as also submitted by the local authority FX appears so unaware of what is going on around him that it is more likely than not that he did not know, or more accurately he failed to observe what a responsible parent should have seen when taking notice of the environment in which his children were living. I have to note too that the local authority itself had entrusted and recruited MY as support for vulnerable women locally.

115. Taking into account the totality of the evidence including FX's inability to cope with A from an early age it is more likely than not that in frustration and anger FX did throw A's computer down the stairs. FX passive parenting and lack of insight would not have led him to employ the simple strategies a reasonable parent would have used to contain and deal with A's behaviour when required, as the experts had advised. The evidence is that when FX found A's behaviour challenging he would shout at his son. I have little doubt that FX found the situation frustrating at best and that it is more likely than not that he would say that he hated A in a flash of anger and that A had heard it. The fact that it was a momentary loss of control does not reduce the impact on the child and it must have contributed to A's feeling that he was treated differently to his siblings and that his father cared less about him than the other children.
116. A's feeling of rejection by his father was compounded by FX's reaction to B's complaints about A and his sexual behaviour towards her when FX immediately believed B. I asked FX if he could understand that his son needed him just as much as his daughter and that A was in a dreadful situation but I regret to say that FX did not seem to understand. The relationship between A and his father is, as it has been described elsewhere, fractured. Further evidence of FX's passivity and inability to take responsibility as a parent could be seen in the witness box when he agreed that he had merely accepted updates about A from the social work team and had not actively sought to enquire about his son since the evening of 21<sup>st</sup> July 2020.
117. The evidence of MY. MY has a substantial history of drug abuse and she now accepts substantial abuse of amphetamines. The hair strand drug test results prove to the requisite civil standard of proof that MY used amphetamines between 25<sup>th</sup> July 2020 and 21<sup>st</sup> January 2021. The test found amphetamine in all six sections of her hair analysed; at high levels consistent with regular misuse between 30<sup>th</sup> January 2021 and 30<sup>th</sup> April 2021. Amphetamine was found in all three sections of hair analysed between 11<sup>th</sup> May 2021 and 8<sup>th</sup> September 2021 again, at a high level consistent with regular misuse. The cause for concern is not only the drug abuse itself and the effects on E and MY's ability to parent her but the fact that MY lied about it prior to the test results being known.
118. MY had accepted prior to giving oral evidence to this Court that she had been using amphetamine. She told me that she had been using amphetamine since 2013 and the during the period relevant to these proceedings had been using it daily. It is to her credit

that she has now made those admissions and that on 8th November 2021 she sought professional help by taking up assistance from Barod (a drug misuse service). The local authority has acknowledged that this is “*a significant step for [MY] who has previously chosen to ‘go it alone’*” and it is one they support. MY has also accepted that the threshold criteria are met that in that her mental ill-health and her drug misuse must have had a negative impact on her ability to parent E.

119. It is essential in planning for E’s care in the future that the court has considered the full effect and extent of likely harm to E, even though her mother’s admissions are of themselves a positive indication and evidence that MY will be able take up professional help and support in a more open and frank manner than she has in the past. Nonetheless by using amphetamine on and off for a prolonged period of E’s life MY has compromised her daughter’s well-being and safety and one can see from the psychological assessment of E some of the significant harm she as suffered. It is now known that during the relevant time (in respect of care proceedings) MY had permitted a drug dealer to enter the home when E and the X children were there. This posed a risk to the children by itself, drug-dealing is a serious crime which has attendant risks involved at all times.
120. Secondly, MY had previously been dishonest about her drug misuse which was revealed only as a consequence of the drug and alcohol testing ordered in these proceedings. It was as a direct result of this deception about her continued abuse of amphetamine that the X children were removed from their father’s and her care on 26<sup>th</sup> February 2021 and put in foster care. It also led to the local authority issuing public law proceedings in respect of E. Not only had MY denied any drug abuse when she did admit using she has tried to minimise her consumption.
121. As referred to above at the ICPPC in August 2020 both MY and FX said that no drugs would be taken in her house as she didn’t agree with drug-taking. That was a lie we now know that at the time she was taking amphetamine daily. Although she should have known it would be detected on 27<sup>th</sup> January 2021 MY had told the sample collector that she did not take any illicit drugs, another lie followed by yet another on 6<sup>th</sup> May 2021 when she told the sample collector she had only taken amphetamine in February and March on four occasions. The next day (7<sup>th</sup> May 2021) MY she told the consultant psychiatrist Dr J (Janas) that she had not used amphetamine between 2013 and July 2020 when she said she had resumed her use of amphetamine, yet her own medical records revealed a history going back to 2013 of amphetamine misuse, alcohol abuse and to smoking cannabis. Her medical records reveal that MY has a history of denying and minimising her drug misuse. In her oral evidence her admission that she had effectively misused amphetamine regularly since 2013 goes beyond her admissions to her treating clinicians. There can be no doubt that MY has lied about drug abuse. She was, it would seem, franker with this Court and told me she had done so because was embarrassed about it; it is also likely that she would have been frightened about what action might be taken in respect of E. In many ways to those on the outside she appeared to be functioning well enough and I do not consider that it would be congruent with the direction *Lucas* as applied in these proceedings (and as submitted by the local authority) to reach a conclusion that it follows she has lied about everything else.
122. I have concluded on considering the totality of her evidence and in particular her evidence to this Court that MY tried to assist the Court as best she could. She thought about and took care over her answers without seeking to exculpate herself. Her evidence



was markedly more child-centred than any of the other parents or family members who we heard gave evidence; with the exception of the members of FZ's family (see below). Her affection for E was apparent and affectionate. MY was the only respondent/parent who was able to describe the steps she had taken to safeguard E as she entered puberty and adolescence. Moreover MY accepted that the steps she had taken were lacking; that E and B should not have been able to access the film "365"; that she should have reported "the sex offender" who made contact with E. In respect of the last she had at least thought about it at the time and taken steps to ensure that E's online contacts were restricted but had concluded it was not necessary to go to the authorities something with hindsight she said she should have done.

123. The evidence of FZ. I have already set out my reasons for accepting the children's evidence and reported complaints about FZ controlling and coercive behaviour; and that he has been violent and abusive to them, to A in particular, and to their mother as they complained. The children were scared of FZ and explained their reasons for being scared (see above). Were the evidence and reports of the children the only evidence about FZ it would have rightly raised real concerns about his behaviour, but it is not the only evidence.
124. I turn to the evidence of FZ himself. FZ was a less than credible witness. He repeatedly dissembled and was constantly avoidant in his response to questions from counsel and the Court. He was also inconsistent in his evidence. In the written response filed on his behalf FZ had appeared to have accepted the results of drug tests which revealed fairly regular amphetamine use for the 195 days leading up to 29<sup>th</sup> January 2021. This evidence was not challenged on his behalf. Despite the also unchallenged enhanced clinical interpretation that the levels found required regular use throughout that period, in his oral evidence FZ tried to get the Court to accept that he had only taken the drug three or four times during that whole period. When questioned more closely about these few occasions FZ's responses where he took the drug and from whom he bought it became more and more convoluted and were simply not to be believed.
125. In relation to the complaints about his behaviour by the children he was dishonest and inconsistent. In relation to the shoe rack incident FZ initially told the police there was no shoe rack; that account was changed to part of a shoe rack falling or being thrown through the loft door; but in cross-examination when asked to explain the differences were pointed out FZ dissembled, his account became confused at one point he appeared to be saying he could not remember any shoe rack or part of a shoe rack at all and that he did not know whether or not MY had cut her finger. As to assaulting A his evidence was similarly inconsistent and meretricious; in his police interview 20<sup>th</sup> August 2020 FZ's first account of the incident he says he restrained A it was of simply giving A a bear hug to restrain him. When A's account is put to him and the detail given by A needs explanation FZ then elaborated and his account become embellished to the extent that it again stretches credulity.
126. In evidence FZ's only explanation for the children's having repeatedly made complaints about his behaviour complaints was his repeated allegation that the children's complaints were made up because FX and MY wanted a bigger house. MY's evidence about this was that she did not want to move and intended to remain in their home with E. I accept her evidence and consider that there is no foundation for, nor evidence in support of, the allegations made by FZ and MX in respect of MY or FX seeking to be re-housed.

127. FZ sought to portray himself as a victim and as put upon. At no point in his evidence did FZ demonstrate or express any empathy or sympathy for anyone else, be they adult or child. FZ tried to convince the Court and told me in terms that the local authority had acted “*unlawfully*” and made him homeless during the pandemic, but FZ had agreed to vacate MX’s property, the home he had moved into and later shared with MX and the baby, to enable F to remain at home with her mother under an interim care order. FZ was represented at the hearing where and when the order was made on 26<sup>th</sup> February 2021 and his agreement can be found at paragraph 6 of the recitals to the order. All the objective evidence flatly contradicts his claim.
128. FZ’s attempt to claim victimhood is not only contradicted by the evidence before the Court to which I shall make further reference, but it is also in keeping with the self-pitying attitude he has adopted and demonstrated in the past such as when he threatens to harm himself when he does not get his own way. In fact, and to the contrary, the records and evidence before the Court demonstrated a willingness on the part of the local authority to assist him. When his drug abuse was found out there was a home visit by the social worker [LG] where his accommodation needs were discussed. At first FZ said he wanted to move back to England and the social worker confirmed that the local authority would pay the cost of transport to allow continued contact with F. FZ then chose to live with Mr and Mrs S until July 2021 when the local authority offered to assist him with housing options. FZ then found his own accommodation. The local authority then offered him his bus fares to help him to attend contact, and offer he has refused as he has said he prefers video contact rather than have direct contact. When asked about this in evidence he was unable to give any reason other than his own convenience. Thus FZ demonstrated putting himself, his needs and his wishes before seeing his child.
129. FZ has demonstrated to those other than the children his petulance when confronted by something that does not accord with what he wants or is inconvenient to him. The evidence of the social worker [LG] about FZ’s behaviour when attempting to justify and minimise his drug results, is telling; FZ is unable to control his anger and he paced about eventually shouting at the social worker. It is further evidence demonstrating FZ inability to control his temper and his capricious behaviour when he does not get his own way or is faced with an unpalatable fact regardless of how it affects others. In this instance the infant F was present and was getting upset and it was the social worker who had to persuade him to reassure F. It was a relatively minor incident which was properly contained by the presence of the social worker but is more evidence of FZ’s lack of self-control and inability to moderate his behaviour in front of children, in this case his own baby. I find that FZ poses a real risk to all children, his own and others. He is controlling and abusive and has used obscene language such as calling C a cunt as part of his intimidatory behaviour.
130. FX’s family’s evidence. The Court has heard from FZ brothers RZ and SZ and their respective partners. They had, as I have already observed, no reason to lie to the Court. They have no connection at all with FX or MY and no reason to give evidence to support them. RZ and SZ gave their evidence despite vehement family pressure, particularly from their father, not to do so. Both brothers gave evidence in respect of FZ behaviour notwithstanding their real concern about the impact that giving evidence would have on their relationship with their father. Indeed RZ had to be witness summonsed, but once he was before the court was frank and open in his response to the

questions put to him. They did so because they put the interests of the children first. I found RZ and his partner J and SZ and his wife K all to be open and honest in their evidence they had no agenda, their motives for giving evidence could only be altruistic.

131. They all told the court that FZ's drug of choice is amphetamine and that it had been since he was a young. They all described his challenging, aggressive behaviour as a long-term problem going back years. SZ describing FZ as getting angry rapidly; "*going from 1-100 very quickly*". They gave evidence of witnessing threatening, intimidating and aggressive behaviour by FZ. Specifically in respect of his abusive behaviour towards MX, SZ and K both gave evidence of an incident they had witnessed over the video link with the MX/FZ household when FZ was seen shouting at MX and being aggressive to her and with MX telling him to calm down. There is no discernible reason for them to have made up their evidence I accept it.
132. If further evidence of his aggressive, petulant and coercive behaviour were needed it was provided by FZ's reaction to his family giving evidence as he behaved in the same manner he has been seen to demonstrate with others who he perceives as countermining him. He sent his family messages that were no more nor less than (to use the term employed in the local authority's closing submissions) emotional blackmail. To KZ and SZ he said that they would have his death on their hands and that they were no longer family. FZ immediately blocked them on social media, a method of showing his disapproval that FZ had employed with his own son.
133. This Court has heard evidence about FZ's older children and in particular his son Z. Z is vulnerable teenager and did not give direct evidence to the court. Z was not brought up by FZ but as a teenager had expressed an interest in getting to know his birth father. It had been arranged that Z, then only fifteen, would go to visit FZ between Christmas and New Year in 2019. Not long after he had been dropped off Z contacted his parents by text and asked to return home much earlier than arranged because he was very distressed by FZ behaviour. FZ had argued with Z about smoking (something he was allowed to do by his parents at home). Z said that FZ had threatened to take his phone off him and that he was locked out of the house and scared. Once again FZ was laying down rules and acting in an aggressive and controlling manner. This was evidence of given to the Court by RZ. Z had texted his parents and had later spoken to them about what had happened. Z told RZ about hearing FZ shouting at the children in the household, bragging about hurting A and Z had found it (the atmosphere) frightening for the other children in the house. Z was collected from the MX/FZ household the next morning by RZ who had hired a car first thing in the morning to go to get him.
134. FX and MX had immediately blocked Z on social media and Play Station almost immediately as Z was to find out when he got back to his home in England. This obviously upset and hurt Z, as it was no doubt intended to do. I accept the evidence of RZ about this episode and find it is further evidence of how deliberately cruel and emotionally aggressive FZ can be when he is crossed. The fact MX participated in this deliberate and malevolent act is further evidence of her putting FZ before the interests of a child or young person, in this case FZ's own son. It was only Z's second visit to his birth father's home and Z was only fifteen years old and vulnerable, and not only because of his youth, something FZ was aware of as he later tried to use that vulnerability against Z. Z had been, I was told and accept, excited to be going to stay with his father. FZ because Z had not done exactly as FZ said in respect of his smoking tobacco Z was threatened and frightened. FZ demonstrated little or no concern for his

son's feelings and no consideration of his son's welfare. Consistent with his past behaviour FZ's petulant and aggressive reaction can only have been intended to cause the boy distress.

135. In cross-examination FZ took no responsibility at all for what had happened between him and Z, instead he called his son a liar and sought to blame the boy by telling the Court that Z had anger and mental health issues. In this aspect of his evidence alone FZ is consistent, his response to any complaint or evidence about his abusive behaviour is to call anyone and everyone a liar. Thus, according to him the children B, C, D and E are lying as is Z. His family and RZ, SZ and their respective partners are liars. The social workers ED and LG are liars, and of course MY and FX are liars. I find that of all the witnesses it was FZ's evidence that most obviously lacked credibility and that what he said was repeatedly contradicted and disproved by the other evidence including that of the other witnesses. It is hard to find any redeeming feature in FZ's case and I can only reject his evidence.

### **Conclusion**

136. For all the reasons contained in the analysis and discussion of the evidence set out above I find that the additional findings (that is in addition to the admissions and concessions already made by MX, FX, MY and FZ) sought by the local authority to be proved to the requisite civil standard of proof and find that the s31 CA 1989 threshold is met. In addition I find that although not parents in respect s31(2) (b) (i) the maternal family specifically Mrs M and Mr M and Mr S, by their behaviour and partisan interference in the case, have all caused the children additional emotional harm during the currency of the private law proceedings and after the public law proceedings had commenced. This emotional harm was contributed to by the conduct of MX and FZ.
137. The local authority have fairly and in the interests of justice accept that there have been times, particularly during the latter part of the private law proceedings and at the outset of the public law proceedings, when it has permitted the hostility of maternal family and their vociferous complaints and allegations, not only but mostly in respect of MY and E, to deflect the focus of social work team from the best interests of all the children and the children's welfare. In turn and inevitably this detrimentally compromised and obstructed the local authority decision making and planning for these children and undermined their implementation of social work best practice.
138. The private law proceeding became little more than a battle ground, as is all too often the case, with the children and, to some extent at least, the local authority caught in the middle. The conflict was initially between the X children's parents but almost immediately was worsened by FZ and then by the machinations and malevolent interference of the maternal family. A failure to get a grip on the private law proceedings, which began in July 2020, did not help. Part of this was the all too frequent delay in police disclosure which not provided until a court order was made in November 2020 which the police finally responded to on 18<sup>th</sup> December 2020. It was not until the public law proceedings were issued in January 2021 that the case was finally taken in hand.. Nonetheless I am, as I must be, mindful of the fact that the case began at a time when the United Kingdom as a whole was grappling with the Covid pandemic and that the courts were struggling to cope.
139. This is my judgment.

