



Neutral Citation Number [2022] EWFC 39

Case No: ZC20C00674

**IN THE FAMILY COURT**  
**SITTING AT THE ROYAL COURTS OF JUSTICE**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 9 May 2022

**Before:**

**MR JUSTICE POOLE**

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**Between:**

**A London Local Authority**

**Applicant**

**- and -**

- (1) KB (by her litigation friend, the Official  
Solicitor)**  
**(2) LB (a Child by his Children's Guardian)**

**-and-**

**Respondents**

- (1) GH**  
**(2) AB**  
**(3) CD**  
**(4) EF**

**Intervenor**

**Geraldine More O'Ferrall** (instructed by Local Authority Solicitors) for the **Applicant**  
**Eleanor Keehan** (instructed by Burke Niazi on behalf of the Official Solicitor) for the **First  
Respondent**

**Sandra Fisher** (instructed by Beu Solicitors) on behalf of the **Second Respondent**  
**Malcolm Macdonald** (instructed by GT Stewart Solicitors) for the **First Intervenor**  
**Victor Ogunbusola** (instructed Montas Solicitors) for the **Second Intervenor**  
The **Third and Fourth Intervenor**s in person

Hearing dates: 10 – 18 February and 28 March 2022

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**JUDGMENT**

**Mr Justice Poole:**

1. This judgment follows a finding of fact hearing in public family law proceedings brought by a London Local Authority in respect of LB, a boy born in November 2020. LB's mother, the first respondent, KB, has moderate to severe learning disability having suffered hypoxia at birth. She is non-verbal, she lacks capacity to make decisions about engaging in sexual relations or to consent to sexual intercourse, and she is fully dependent on others for her care. Her pregnancy with LB was the result of her rape by GH in late February or early March 2020. At that time KB was being cared for within her family which comprised her mother, AB, her sister CD, and her brother EF. GH had married AB in a religious ceremony in or about 2013. They had lived together until in or around 2017 when GH moved out into his own accommodation. Nevertheless, they stayed married and he continued to visit AB at her home and to help out with cleaning, shopping and ironing. GH has admitted the rape and although the details of the offence are unclear, GH says that he committed the rape when at AB's home. The anonymity of the Local Authority and all individuals concerned, including GH, is preserved to protect the identity of KB, who is a highly vulnerable woman, and LB, her child. The circumstances of the case are such that naming GH, the Local Authority or any members of KB's family would be likely to lead to the identification of KB and LB.
2. AB described GH to police as one of KB's paid carers. KB's pregnancy was not detected until over 22 weeks gestation. Therefore, serious questions arise as to the arrangements for protecting and caring for KB. The Local Authority's position is that AB and CD not only failed to protect KB but that they, and to an extent EF, exploited her for their own interests. The Local Authority's allegations are set out in the Scott Schedule at Appendix One to this judgment. The Local Authority alleges, in short, that:
  - i) GH raped KB for whom he had paid, caring responsibilities.
  - ii) AB misused the Direct Payments made by the Local Authority for care provision by employing her husband GH in breach of the terms and conditions of the payments thereby evidencing a lack of transparency and an element of dishonesty.
  - iii) AB failed to follow Local Authority guidelines in not seeking police checks or work checks when employing carers, but for which she may have prevented GH from having unfettered access to and opportunity to abuse KB.
  - iv) AB and/or CD and/or EF abused their positions of trust in having a Lasting Power of Attorney, and care of KB's financial matters including a bank account in an African country in her name as Company Secretary, despite her known lack of capacity.
  - v) AB and/or CD failed to take KB for medical attention in relation to KB's pregnancy when it should have been apparent to them that she was pregnant due to their intimate care of her.
  - vi) AB and/or CD and/or EF and/or GH sought KB's pregnancy to go to full term for financial gain or other motive not in KB's interests.

- vii) AB and/or CD colluded to ensure the pregnancy would not be noticed by medical professionals until it was too late to perform a termination.
  - viii) As a result of the matters above, AB and/or CD abused their duty of care and failed to protect KB and thus LB by intentionally or negligently permitting GH to have unsupervised access to KB, failing to take KB for medical attention when there were signs of pregnancy, and exposing LB to the risk of future significant emotional harm when he learns of the circumstances of his conception and birth.
3. It is not in dispute that GH raped KB. The arrangements in place to care for KB at and around the time of the rape, GH's involvement in her care, the way Direct Payments were dealt with, and the reasons for the delayed recognition of KB's pregnancy are not agreed and have been the subject of written and oral evidence.
  4. Criminal proceedings against GH are concluded. Having initially denied any involvement and made allegations that the perpetrator was probably one of AB's tenants, he pleaded guilty to the rape of KB in early 2021 after DNA testing. He also pleaded guilty to a multiple offence count of fraud in that between 1 January 2020 and 15 January 2021 he used a false identity to obtain employment. In June 2021 he was sentenced to a total of 12 years and 8 months imprisonment.
  5. A capacity assessment of KB by Dr Clarke, Consultant Obstetrician and Gynaecologist, on 20 January 2021 reported that:

KB was affected by a birth injury, which resulted in a hypoxic ischaemic injury to the brain. This has left her effectively with extremely limited language and extremely limited comprehension.... She is barely verbal .... She is able to do basic tasks but finds it impossible to demonstrate understanding of the concepts of birth and parenthood, even explored with pictures, using sign language (Makaton). ... She is not able to understand even simple concepts. She is unable to confirm her name and give spontaneous answers.... She would be completely unable to make anyone, even her close family, aware of her views or opinions due to her existing severe learning disability.

KB has epilepsy, controlled by medication, and autism. Her IQ has been assessed as being between 39 and 45. She has physical disability meaning that she requires support for walking more than short distances. She suffers from bilateral optical nerve atrophy.

6. KB, who is now in her 30's, was brought up by her mother, AB who has continued to be her main carer in her adulthood. She has two younger siblings, CD, her sister, who is a healthcare professional, and EF, her brother, a teacher. They are both in their 20's, unmarried and without children. The arrangements in February 2020 were that KB had a two bedroom flat ("the flat") where she stayed overnight with CD. The flat was rented in KB's name. She would visit a Day Centre three times a week. A carer, JK, would help to get her ready in the mornings. JK was a woman who had the same African heritage and spoke the same African language as the family. AB would drive KB to the

Day Centre. After the Day Centre, KB would return to AB's home before being taken to the flat once CD had come home from work. Sometimes KB would stay overnight at AB's home. There had been longer periods, when CD was committed to a placement or study away from home, when KB stayed at the family home. When not at the Day Centre she would spend her weekdays with AB. At weekends she would spend time with CD. EF lived at AB's home. He was not involved in the intimate care of KB, which would be done by AB, CD and/or JK.

7. GH also shared the same African heritage as the family. He formed a close relationship with AB in part due to their joint involvement in a church which AB helped to found and at which she is a pastor ("the Church"). GH and AB began to live together at AB's home after a blessing at the Church and a traditional marriage in their African country of origin.
8. AB took KB to her GP on 14 February 2020 reporting a cough but no vomiting. The national lockdown due to the Covid-19 pandemic began a few weeks later. In subsequent months KB's GP records show some on-line requests made by AB for letters about KB, but no requests for appointments until 30 July 2020. On that date AB used the GP surgery's online system to request an appointment. She was telephoned by a GP at the surgery on the same date who recorded,

Secondary amenorrhea...

Telephone call to a patient's mum ... Several months of amen, used to have slightly irregular periods but was every month before this, some brown discharge in underwear, no itch, no urinary syx, not weight loss, not sexually active and never has been but noticed breasts are swollen and stomach is swollen – adv to do pregnancy test asap just to be sure, to call us back if positive. Otherwise have booked for examination Monday.

9. On Monday 3 August 2020, the same GP saw KB with AB who had brought in two pregnancy tests, both positive. A further pregnancy test was conducted in the surgery which was also positive. The GP noted,

KB said very little during the consultation – was unable to ascertain if she understood if she was pregnant ...

Discussed what thoughts were regarding pregnancy – Mum AB seemed initially cheerful in the consultation – stated that she would have to look after the baby and that she was glad KB was not suffering from any sickness. Mum AB seemed to be expecting KB to continue the pregnancy. Discussed implications of pregnancy - discussed concerns around AB's ability to consent, discussed if she has fallen pregnancy [sic.] and she is unable to consent to sexual intercourse we would be concerned about rape. This seems to have come as a shock to AB/ AB does not think KB has got a partner and they are together all the time since the lockdown in March .... AB discussed that she knows

sometimes periods can be irregular and that is why she did not think about it much more ... and only after noticing the stomach swelling and breast swelling she thought something is not right.

10. On the same day, 3 August 2020, KB attended the Maternity Assessment Unit at a London Hospital where a scan confirmed that she was 22 weeks and 3 days pregnant. That dates conception, allowing for some leeway, at the end of February/beginning of March 2020. Dr Clarke was not present at that attendance but notes that “there was no request to facilitate termination of pregnancy at any time from the family or social care.” She first saw KB, in the company of AB, on 27 August 2020 by which time KB was over 25 weeks pregnant. Dr Clarke “confirmed with AB that termination of pregnancy was not something that she or the family were considering...”
11. An application was eventually made to the Court of Protection for a declaration that it was in KB’s best interests to undergo a Caesarean section. I heard that application on 12 November 2020 and made the declaration sought. At that time, the father of the unborn baby was still unknown.
12. GH was arrested on 3 November 2020 and interviewed but he initially denied having any knowledge of who the father of KB’s then unborn child might be.
13. LB was delivered by Caesarean section in November 2020. KB was and is unable to care for him as his parent. His father was then unknown and there were concerns about the circumstances under which KB had had sexual intercourse whilst in her family’s care. LB was made the subject of an interim care order in favour of the Local Authority in November 2020. He was placed with foster carers with whom he remains, having contact with KB and other family members.
14. The police interviewed GH again in December 2020 and he appeared to blame lodgers at AB’s house for KB’s pregnancy. He strongly denied being KB’s carer.
15. DNA evidence established that GH was LB’s father. GH was interviewed a third time by police but gave “no comment” answers. GH pleaded guilty to a single count of rape of KB and was sentenced in June 2021 to 12 years imprisonment for rape and a consecutive period of 8 months for fraud related to having obtained work using a false name. A search of his home had produced a false identity card and bank cards. GH had made an application for leave to remain in the UK saying that he was destitute, unmarried and had no children. In fact he was in work under a false name, married to AB and had children from a previous relationship in his African country of origin.
16. In the pre-sentence report prepared by a Probation Officer, GH is reported as having said that although he had told the police that he was never at AB’s house without AB being present, that was not true.

He said that KB would often get up in the night and wander around and on the night of the offence he said that he had heard her awake and he had gone to her room ... He said, “I don’t know what happened to me” and told me that KB had “grabbed me” and that sexual intercourse had taken place.”

The Probation Officer noted that this version of events was difficult to reconcile with what he knew about KB's condition. The sentencing judge did not accept that KB "was in any way responsible" and said to GH that this was "but another example of failing to acknowledge your own actions."

## **The Hearing**

17. The core bundle of documents provided to the court for this finding of fact hearing exceeds 8000 pages. There are other bundles including a bundle comprising documents found by the police on AB's laptop. The volume of documentation is largely accounted for by the extensive police investigations including multiple interviews and interrogations of numerous mobile phone devices. I heard oral evidence from Dr Clarke, Consultant Obstetrician, a Senior Clinical Specialist Nurse, a Key Worker from the Day Centre, a GP from KB's GP Practice, PC Gillam who was the officer in charge of the criminal investigation, Mr Canning, from the Office of the Public Guardian, JK, who was paid to care for KB, the allocated social worker, and from GH, AB, CD, and EF. GH attended remotely from prison throughout the hearing and screens in court were used when needed to protect members of KB's family from seeing him whilst he gave evidence. When he was not giving evidence his camera was turned off. He required an interpreter. Unfortunately, partly because of difficulties with interpreters and the prison link, the evidence could not be concluded in the expected time and so an additional date for concluding the evidence had to be found. CD therefore gave her evidence some weeks later. Written submissions were then received and time had to be extended for their receipt due to the commitments of certain Counsel.
18. The findings sought by the Local Authority require determination because, if proved, the findings would have serious implications for the viability of LB's future care being within the family. In the absence of certain findings being made, the possibility of LB being cared for within the family would remain. AB, CD and EF have all put themselves forward as permanent carers for LB either by themselves or jointly with each other.

## **The Witnesses**

19. Whilst I set out my impressions of the witnesses in this section of the judgment, the impressions are formed after consideration of all the written and oral evidence in the case.
20. I found all the professional witnesses to be honest and reliable. They were anxious to assist the court and to answer the questions put to them fully and accurately.
21. The evidence of JK was important. She was the only non-family witness who could speak to the arrangements and dynamics within the family. It was clear that that she had an affectionate bond with KB but she had little grasp for the details of arrangements. She appeared as a humble and naïve woman whose respect of AB had led her to

unquestioningly follow her directions. As such I was struck by her honesty if not by her reliability when it came to detailed evidence.

22. Section 98 warnings were given appropriately to witnesses against whom allegations are made by the Local Authority which, if true, could amount to criminal offences.
23. In assessing his credibility I make allowance for the fact that, although legally represented, GH had to give evidence remotely, via an interpreter, and from prison. He did not have a legal representative at hand and it cannot have been easy for him to prepare for the hearing given his incarceration and the volume of documents in the case. Nevertheless, his evidence was unfocused, inconsistent with much of the documentation and some of his out of court statements, and often incredible. His goal when giving evidence appeared to be to spread blame for events in this case to everyone except himself. I refer to some particular parts of his evidence which I reject in the remainder of this judgment. GH's main case was that he was never employed as a carer or in receipt of any payments for caring for KB, that AB was a fraudster and that she had set him up in relation to sexual intercourse with KB - which he told the court happened during the day when AB left him alone with KB at the family home - and that the whole family had abused the benefits system for their own financial advantage.
24. AB was represented and able to attend court throughout the hearing, but I take into account the difficulty for her of answering detailed questions about a large volume of material and the stress involved in having to talk about her vulnerable daughter's rape. Naturally, this was distressing for her and breaks were taken to allow her to recover her composure when that was required. Generally, however, she was composed and able to answer the questions from and on behalf of the other parties. She was angry about GH's actions and his allegations against the family. She maintained that she had properly employed JK and GH as carers for KB but that GH was never involved in any personal care and that she had never allowed GH to spend any time alone with KB. She remained mystified as to how the rape could have occurred. Her sole interest had only ever been in KB's best interests and she tried to remain positive at all times so as not to distress KB. She had founded the Church in which she remained heavily involved. She felt that Direct Payments should have been made to provide for 24 hour care for KB. She managed the Direct Payments properly with the help of an accountant. She wanted to be able to look after LB within the family. In many ways AB is an impressive woman who has provided care for KB within the family for over thirty years, as well as bringing up CD and EF largely alone, and who has founded and run the Church. However, whilst unfailingly courteous, she was frequently evasive in her evidence. She resisted scrutiny of her financial affairs and her dealings with GH and sought to justify conduct which could not be justified. Just as she had tried to hide her relationship with GH from authorities in the past, so she tried to conceal her dealings with him by failing to answer questions put to her at the hearing.
25. Although the Local Authority did pay for some modest legal fees for CD and EF to receive advice, they were not legally represented at the hearing and had the difficult task of preparing their cases in a sensitive and document-heavy case largely without legal assistance. I pay tribute to the way they conducted themselves during the hearing, remaining dignified and courteous throughout. They understandably shared their mother's hostility towards GH. I take into account that they too had the difficult task of answering questions related to their sister's rape. Nevertheless, EF was often evasive when answering questions in cross-examination. He was reluctant to give direct

answers and sometimes his evidence had to be extracted from him by repeated questioning. CD was more forthcoming and, I found, more open and honest during her evidence. Both CD and EF tended to be very defensive of their mother, trying too much to excuse her conduct. For example, AB had clearly not been open with the police and social services about her relationship with GH – she had not told the police that they were married and she had referred to him as KB’s uncle in discussions with a social worker – but CD and EF sought to excuse this by questioning the police officers’ attitude and saying that the term used by AB was an affectionate name for a senior male in a social group. That may be so, but it did not explain their mother’s failure to declare that he was her husband. Perhaps because CD was the last witness to give evidence and there was a long break before she gave her evidence on the last date of the hearing, she was more open than her mother and brother had been having had more time to reflect on the evidence previously given. She admitted that the proceedings had demonstrated that the family members had not known each other as well as they had assumed, that there had been compromises and that they needed now to ensure that things were done properly in relation to KB’s care. It appeared to me that CD accepted that AB had kept information from her and EF, for example about her relationship with GH. This was something to which EF had also alluded during his evidence, at least in relation to GH’s treatment of his mother. Whilst CD remained overly defensive of her mother, she answered questions directly, she became more open, and I found her generally to be a credible witness whose evidence was mostly consistent with the documentary and other evidence in the case.

26. Throughout the hearing I was struck by the genuine love and affection that CD and EF had for their sister, KB. EF has been less involved than CD in KB’s care, but his affection and willingness to support her was still strong. CD has built a career as a healthcare professional and whilst forging that career she has not had as much time as she would otherwise have enjoyed to be with and care for KB. However, she demonstrated a deep understanding of KB and a deep bond with her. AB too is obviously a loving mother but she has allowed her own sense of entitlement to lead her to dishonest and self-serving practices as I set out in my evaluation of the evidence below.

## **The Law**

27. The parties have submitted an agreed statement of the applicable law to which I have had careful regard. The judgments of Baker J in *A Local authority and (1) Mother (2) Father (3) L & M (Children, by their Children’s Guardian)* [2013] EWHC 1569 (Fam) and Peter Jackson J in *Re BR* (Proof of Fact) [2015] EWFC 41 are of considerable assistance in guiding the court’s approach to a finding of fact hearing of this kind. I derive the following principles from those cases and the authorities that those judges reviewed:
- i) The burden of proof lies on the Local Authority that brings the proceedings and identifies the findings it invites the court to make.
  - ii) The standard of proof is the balance of probabilities, *Re B* [2008] UKHL 35. If the standard is met, the fact is proved. If it is not met, the fact is not proved. As Lord Hoffman observed in *Re B*:



“If a legal rule requires facts to be proved, a judge 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.”

- iii) There is no burden on a parent or other party to come up with an alternative explanation and where an alternative explanation for an injury or course of conduct is offered, its rejection by the court does not establish the applicant’s case.
- iv) The inherent probability or improbability of an event is a matter to be taken into account when weighing the evidence and deciding whether, on balance, the event occurred, but regard to inherent probabilities does not mean that where a serious allegation is in issue, the standard of proof required is higher.
- v) Findings of fact must be based on evidence not suspicion or speculation - Lord Justice Munby in *Re A (A child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ. 12.
- vi) The court must take into account all the evidence and consider each piece of evidence in the context of all the other evidence. This is sometimes described as a need to view the evidence as a broad canvas. As Dame Elizabeth Butler-Sloss, President observed in *Re T* [2004] EWCA Civ. 558, [2004] 2 FLR 838 at paragraph 33:

“Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion of whether the case put forward by the Local Authority has been made out to the appropriate standard of proof.”

- vii) In a case where the alleged perpetrator of violence or abuse, or a person accused of dishonesty or fraud, is or may be the subject of criminal prosecution arising out of the same alleged facts, it is important to emphasise that the family court is not determining whether the person concerned is guilty of a specific criminal offence. As Cobb J 81. As I said in *F v M* [2019] EWHC 3177 at [29], in a passage endorsed by the Court of Appeal in *Re H-N* [2021] EWCA Civ 448,

"There is a risk in a case such as this, where the alleged conduct at the heart of the fact-finding enquiry is, or could be, of a criminal nature, for the family court to become too distracted by criminal law concepts. Although the family court may be tempted to consider the ingredients of an offence, and any defence available, when considering conduct which may also

represent an offence, it is not of course directly concerned with the prosecution of crime."

The role of the Judge in a family case determining findings of fact is fundamentally different from the role of the judge and jury in the Crown Court. As the Court of Appeal said in *Re R* [2018] EWCA Civ 198:

"The primary purpose of the family process is to determine, as best that may be done, what has gone on in the past, so that that knowledge may inform the ultimate welfare evaluation where the court will choose which option is best for a child with the court's eyes open to such risks as the factual determination may have established" [62]

- viii) The opinions of medical experts need to be considered in the context of all the other evidence. In *A County Council v KD & L* [2005] EWHC 144 Fam. at paragraphs 39 to 44, Mr Justice Charles observed:

"It is important to remember that (1) the roles of the court and the expert are distinct and (2) it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. The judge must always remember that he or she is the person who makes the final decision."

- ix) The evidence of the parents and any other carers is of the utmost importance. They must have the fullest opportunity to take part in the hearing and the court must form a clear assessment of their credibility and reliability.
- x) It is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress and the fact that the witness has lied about some matters does not mean that he or she has lied about everything: see *R v Lucas* [1981] QB 720. In the recent Court of Appeal judgment in *A, B, and C (Children)* [2021] EWCA 451, Macur LJ advised at [57],

"I venture to suggest that it would be good practice when the tribunal is invited to proceed on the basis, or itself determines, that such a direction is called for, to seek Counsel's submissions to identify: (i) the deliberate lie(s) upon which they seek to rely; (ii) the significant issue to which it/they relate(s), and (iii) on what basis it can be determined that the only explanation for the lie(s) is guilt. The principles of the direction will remain the same, but they must be tailored to the facts and circumstances of the witness before the court."

In this case the Local Authority alleges that AB, CD and EF are lying about the arrangements for KB's care, including financial arrangements, to cover up the truth of what they did and how KB came to be raped and then to carry her child to term.

28. Amongst the findings that the Local Authority invites the court to make are allegations of dishonesty. In *Ivey v Genting Casinos (UK) (trading as Crockfords Club)* [2017] UKSC 67, Lord Hughes, with whom the other Supreme Court Justices agreed, held at [74],

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

That is the approach that I apply when considering in this case whether any person has been dishonest.

29. Findings of fact will form the basis for consideration of whether the threshold for a care or supervision order under s 31(2) Children Act 1989 has been met. I am of course concerned with the child, LB. Although the facts alleged concern matters before he was born, they concern his family and their ability to care for and protect a vulnerable member of the family, his mother. Their past actions or inactions had an impact on his welfare, they will continue to do so throughout his childhood, and they are relevant to decisions about his future and the ability of members of the family to care for him and protect and further his best interests.

### **Evaluation of the Evidence**

30. Having regard to those legal principles, I turn to my evaluation of the evidence in this case. The behaviour and evidence of AB, CD and EF has not always been conventional and I have had the particular advantage of seeing and hearing their oral evidence. There has been a lack of candour on the part of them and GH such that it has been difficult to discern the truth of what has happened in this case. I remind myself that the burden of proof lies with the party making an allegation and that the standard of proof is the civil standard of the balance of probabilities. Whilst, for convenience, I set out my evaluation

of the evidence under sub-titles below, I have evaluated the evidence as a whole as a broad canvas.

### Key Background Facts

31. The following facts are not disputed:

- i) KB suffered severe brain injuries at birth which have resulted in moderate to severe learning disability, epilepsy (now controlled), and some physical disabilities. She needs constant care. She has needed full time care all her life. AB has provided that care to her, assisted by her other daughter, CD, and son, EF, and in recent years by JK. GH has certainly helped out with chores but the extent of his caring role is in dispute.
- ii) At all relevant times AB has lived in a house in the Y area of London (“the family home”). From 2012 a flat in the Z area of London was rented in KB’s name (“the flat”). CD lived in that flat. AB, CD and EF say, but GH does not accept, that KB lived most of the time in the flat and sometimes stayed at the family home.
- iii) In recent years AB has made a number of visits to the African country of her origin, travelling with KB except for one visit in or about 2017 when she travelled alone for a period of about two weeks, leaving KB in London.
- iv) AB founded and runs the Church in London where she is a pastor. It has links to the African country of her origin. GH was also a pastor of the Church until his incarceration for the rape of KB.
- v) AB and GH were married in or around 2013, lived together at the family home from their marriage until in or about 2017, and remain married although GH moved out of the family home that year.
- vi) GH does not have indefinite leave to remain in this country. He made an unsuccessful claim for asylum. He obtained paid work as a cleaner using a false identity, namely the name and details, including the national insurance number, of a relative, KAS. He had a bank account in the name of KAS. GH has been convicted and sentenced for fraud by obtaining employment using this false identity. It was recorded in the criminal proceedings that he had hidden his employment from the immigration authorities, claiming not to be in work. He was not permitted to work because of his immigration status. Nevertheless, he did work and he appears to have had two cleaning jobs.

### Financial Arrangements

32. KB requires full time care. She cannot be left alone in her own home. She needs to be accompanied whenever she is out of the house. She can manage some basic tasks herself but needs prompting and requires assistance with many other basic activities of daily living. AB receives carer’s allowance. From when KB was about 19 years old, the Local Authority implemented a care plan which provided for 28.74 hours of care per week

from personal assistants. This was to provide respite care for AB, it being expected that she would continue to provide care for KB herself. KB was also attending a Day Centre on three days a week. For some years AB received Direct Payments pursuant to a Direct Payments Agreement with the Local Authority. The agreement would be renewed annually but the material terms remained unchanged. In cross-examination AB was shown a copy of one such agreement which, she agreed, bore her signature. She told the court that she did not recognise the document or the terms. Those terms included stipulations that:

- i) Since she was receiving direct payments herself, she had to open a separate bank account for the purpose of managing the direct payments (paragraph 3.1 of the agreement);
  - ii) To use the direct payments only for services enabling her to achieve the agreed outcomes and to meet the needs agreed in the Plan (3.3).
  - iii) Not to use the direct payments:
    - a) to pay for more hours to a Personal Assistant or agency than we have assessed you as needing by paying a lower hourly rate than we have used as the basis for calculating your Direct Payment;
    - b) for health related services – such as dentist, chiropody, physiotherapy.
    - c) for household expenses, such as food, personal items or utility bills;
    - d) for accommodation - rent, mortgage payments. (4.1)
  - iv) Not to use the direct payments to pay for services from a spouse, civil partner, close relative or other person who lives in your household without our written agreement. (4.3)
33. The Local Authority would require accounts to be provided showing how the Direct Payments had been met. A Direct Payments Policy was also in place. AB was treated as the “authorised person” within the terms of the policy. Under paragraph 13.4 of that policy, “An authorised person should consider carrying out DBS checking or obtain verification that DBS checking has returned a satisfactory result for any person from whom a service is secured through direct payments, where the adult with care and support needs lacks mental capacity to make the decision on how their needs are to be met, or on who is to be employed.” DBS checking was therefore advisable in KB’s case but was not mandated by the Local Authority.
34. AB set up a bank account for the purposes of managing the Direct Payments. I shall refer to it as the DP account. I have some statements for the DP account. AB also had an account in her name and KB’s name with the same bank which I shall call the Personal account. AB had sole control over both the DP and personal accounts. In addition, as was confirmed in oral evidence and not disputed, AB had a joint bank account with GH (“the Joint account”). No statements have been provided from the Joint account. AB also ran a bank account for the church she founded (“the Church account”). I have seen some statements from the Church account. Further, I have seen some statements from accounts in the name of KAS, which were operated by GH.

35. I do not have the benefit of a comprehensive set of bank statements from all the accounts over which AB had sole or joint control. Neither do I have the benefit of a forensic accountancy report. The oral evidence about transactions between bank accounts was confused and unclear. However, having regard to all the evidence I have read and heard, I reach the following conclusions in relation to the financial arrangements:
36. *Direct Payments*
- i) AB controlled a number of bank accounts including the Church account, the DP account and the personal account, as well as a joint account with GH. The accounts all appear to have been very active and AB was involved in numerous transactions every week involving different accounts. There may well be other accounts the statements from which I have not seen. She was responsible for transactions which saw money flowing freely between different accounts.
  - ii) AB purported to employ GH and JK using Direct Payments paid to her pursuant to the Direct Payments Agreement with the Local Authority. They were purportedly paid as carers for KB. AB made monthly payments to GH and JK as evidenced by bank statements from the DP account. Payslips were prepared recording the payments. I reject GH's evidence that he did not receive payments as a carer for KB. The bank statements show payments being made to him. These arrangements were in place in or around February 2020 and had been in place for several years before then.
  - iii) I am satisfied that AB knew that GH was not permitted to work in the UK because of his immigration status. They were married and had lived together as husband and wife for several years. They had a joint bank account and close financial arrangements. Documents showing GH's false name, KAS, were on AB's laptop. A bank statement at [A77] from the account of "KAS" shows a receipt of £300 on 14 October 2019 from the personal account that AB controlled. There is another £300 payment from the same source a month later. Payments were made to the Church account, which AB controlled, from the KAS account. I find that AB knew that GH was using a false identity and had opened a bank account using that false identity.
  - iv) JK would, as she told the court, pay some of the money she received from AB as recorded in her payslips, back to AB. The mechanism sometimes used was for JK to make payments to the Church account. This is but one example of financial transactions that give rise to serious concern that AB has used the Church account inappropriately. The amounts she paid back varied and there was no regular pattern of paybacks. I accept JK's explanation that AB told her that these payments back to her represented remuneration to AB for the care she had provided to KB because JK was not working the number of hours represented on the payslips. JK accepted that her own pay was usually £250 per month, even though the payslips in her name were for over £400 per month. JK struck me as very trusting and naïve and I do not believe that she thought she was doing anything wrong. To her, AB was an authority figure and she did what she was told. Some of these payments back to AB are shown in bank statements, corroborating JK's account. This arrangement was clearly contrary to the Direct Payments Agreement. It was, and I am satisfied that AB knew that it was, a means of diverting the direct payments to benefit her, AB. The Church account

was porous in that payments were made to and from it via personal accounts for AB and other family members. I have no doubt that the monies paid by JK to the Church account were ultimately used for the benefit of AB. There are likely to have been other payments by JK to AB out of her initial payments from the DP account, that were made in cash or through other accounts, but I do not have a comprehensive set of statements to establish the extent of the payments. I reject AB's evidence that the repayments were arranged due to JK working fewer hours than agreed. If that had been the case then the monthly payment would be reduced or adjusted accordingly, rather than a re-payment being demanded. Further, there would have been a credit within the Direct Payments accounts with excess funds available – but there is no evidence of such credits or excess funds. Her evidence conflicted with that of JK. I am sure that one of the motivations AB had for diverting Direct Payments was that she was providing a great deal of care to KB herself. AB may well have considered that she was entitled to payment for caring for KB in excess of the benefits she received, but the agreement was that the direct payments were for employed carers, not for her. By ensuring that some of the money purportedly paid to JK as a carer was diverted back to benefit her, AB acted dishonestly. She was, I am satisfied, aware of these arrangements because she effectively directed them, and, objectively viewed, they were dishonest. It follows that AB has not been honest with the court about these arrangements. I am sure that she has hidden the true position from the court in order to hide what she knows to have been wrongdoing.

- v) GH denies ever having received payments for caring for KB and so does not make any allegation that he made payments back to AB from the money received from her in the same way as JK. I am sure, notwithstanding his denials, that he did receive payments from AB for caring for KB. There is unambiguous evidence in the bank statements provided to the court of payments being made to him which correspond to the amounts recorded in the payslips. The hours of work for which AB paid GH, as recorded on the payslips and represented by the payments made to his account, were far in excess of the hours he spent doing minor chores for the benefit of AB and KB, such as shopping, ironing, and some domestic cleaning. From 2017 onwards he would visit the family home at weekends, so he was not providing anything more than occasional services, if any, on weekdays. All witnesses told the court that he was not involved in any personal care of KB. All he did was to help with some chores. Yet he was paid through the Direct Payments scheme for 60 hours' work a month. Statements from one of GH's bank accounts, in the name of KAS, shows that he withdrew £1,270 from cash points from that account in October 2019 alone [A77]. He clearly conducted many dealings in cash. He told the court that he did shopping for KB. There is no audit trail showing where the money came from to pay for the shopping. There are payments between accounts controlled by AB and accounts controlled by GH, including their joint account. I only have some statements from some accounts but the clear picture is of money passing to and from GH and AB on a frequent basis. It is highly likely, in my judgment, that money from the direct payments, intended to pay for KB's care, was used by AB and GH for other purposes.

- vi) AB has consistently failed to disclose her true relationship with GH. She has said in these proceedings that they were married in a religious ceremony at the church at which she, and later, GH, were ministers in 2013 and there is no dispute about that. However, she wrote a “to whom it may concern letter” stating that she had known GP since he had attended a church service, since when “I began to know him more.” In two other “to whom it may concern” letters dated 14 and 18 February 2020 she writes as a pastor to confirm that GH had been in receipt of support from the Church as a Charitable Organisation for his “living expenses”. Again, there is no mention that they were married. She did not disclose their relationship to the Local Authority when she began to use Direct Payments to pay him for caring for KB. I have noted that the Direct Payments agreement required her to do so. She did not tell the police in interview the true nature of their relationship, giving the impression that he was a family friend and carer, not that they were married. She referred to him as “uncle” to KB’s social worker in August 2020 [F429]. CD and EF sought to explain to the court that “uncle” was a term of endearment to any senior male, but whilst I accept that AB was not intending to suggest that GH was KB’s uncle by relation, the use of the term obscured the true relationship between AB and GH which she neglected to mention. I am satisfied that the reason why AB failed to disclose her true relationship with GH to the social worker, to the Local Authority and to the police, is that she wanted to give the false impression that he was an unrelated, paid carer. In fact, she used the Direct Payments to pay money to him which she and GH then used for purposes other than for providing paid care for KB. As with the arrangements in relation to paybacks from JK, AB was dishonest in her financial dealings regarding the use of Direct Payments purportedly for KB’s care by GH.
- vii) Again, I conclude that AB has not been honest with the court about her arrangements involving the use of Direct Payments to give money to GH which was not truly for care services rendered by him and which resulted in financial benefit to him and her. She has misled the court in order to hide her wrongdoing in that respect. Likewise, GH has sought to hide his financial benefit from the misuse of the Direct Payments in order to distance himself from what appears to be fraudulent activity.
- viii) I am not satisfied that the evidence establishes that either CD or EF were knowingly involved in any of the financial arrangements involving Direct Payments. AB was very much in charge of those arrangements and there is no evidence that she discussed them with her children or involved them in the transactions. There are payments into the Church account by CD and EF, which they explained to be donations to the Church. They were not regular and I accept that they were genuine. There were payments out to CD and EF from the Church account but they explained their purposes - for example to cover expenses for a particular event - they were occasional and, again, I accept them to be genuine. The evidence does not persuade me that CD or EF were parties to any dishonest arrangements involving the Direct Payments.



- i) The tenancy for the flat is in KB's name, as were a utility account (water) and a warranty for a washing machine at the flat. Documentary evidence shows that KB was recorded as a secretary of the Church with what purports to be her signature appearing on some Church documents as secretary. An application was completed to open a bank account in an African country with her name and signature appearing. There is also a typed letter in her name suggesting that EF would be living at KB's home to assist in her care, again purportedly written by KB. She was incapable of understanding the meaning of the documents she was apparently signing or which purported to be in her name. What appears as her signature was, in each case, very probably written by someone else.
- ii) As to the arrangements for the flat, I do not infer any dishonesty or malpractice by AB or any other person from the documentary or other evidence. During the course of the hearing I was concerned that the flat was never for KB's use but was put in her name in order to provide accommodation for CD. However, I accept that KB did live there, albeit she spent a lot of time at the family home, particularly when CD was not around to look after her due to CD's university or training commitments. AB, CD and EF thought it natural for agreements in relation to the flat to be in KB's name. I accept that they simply did not think about whether, for example, a warranty should be in KB's name, because, as they saw it, the flat was hers and so was the washing machine within it. As to the letter about EF living at the flat, purportedly written by KB, I accept that this letter was never sent to anyone. It was AB who wrote the letter, as she accepted. It would have misled a recipient into thinking that KB had written it, but it did not in fact mislead anyone or procure any financial advantage. It does however underline that AB can be casual with the truth.
- iii) AB did not give any satisfactory explanation for why KB appeared on documents as the secretary of the Church, or for why her signature should appear on certain Church documents including an application to open a bank account. This is an example of AB misusing KB's name. AB told the court that the application was not submitted. There is no other evidence on whether or not it was submitted. However, KB's signature was on the document and she was, apparently, secretary of the charity for a period of time. AB is responsible for those matters. In my judgment it was expedient for AB to use KB as the secretary. It saved time and effort. However, it was plainly wrong to use KB's name in this way.

38. *The Lasting Power of Attorney*

- i) A Lasting Power of Attorney for property and affairs was executed on 12 July 2018 under which KB was the donor and AB and CD the donees. The family had instructed a solicitor to deal with this matter. The solicitor had signed section 9 of the LPA form as a witness to the signature of KB (whose name appears not as a signature but in capital letters both in section 9 and section 15). The certificate provider was a general medical practitioner who signed on 12 July 2018 certifying that the donor understood the purpose of the LPA and the scope of authority conferred under it and that they had discussed the LPA with the donor. Clearly they could not have discussed the LPA with KB without

realising that she did not have the capacity to understand its purpose and scope. Further, the solicitor should have advised the family that KB did not have capacity to make the LPA. The GP has not been traced. She may have believed she was signing some other form of document. It is possible that she signed without reading. It has certainly not been established that her signature is a forgery.

- ii) Naturally, it is concerning that the LPA was made in these circumstances but I heard evidence from Mr Canning, an Investigator at the Office of the Public Guardian, who told the court that the error of making an LPA purportedly in the name of a donor who lacked capacity was not uncommon. I note that, on making investigations, Mr Canning received no response from the solicitor involved in making the LPA nor from the GP who acted as the certificate provider (who, I should make clear, was not the GP who gave evidence at Court and is no longer a GP at his practice). The making of this LPA was clearly in error: it was invalid, and it has subsequently been removed from the register. However, I accept that the family were given erroneous advice that an LPA was the appropriate mechanism for managing KB's property and affairs and that they followed that advice in good faith.

39. Arrangements for Caring for KB

- i) GH alleges that when he lived with AB from 2013 to 2017, KB was also living there rather than at the flat, and that a room was rented to tenants. He says that CD and EF then lived in the flat. He alleges that a room at the flat was also rented to tenants. He says that after he moved out of the family home in 2017, he would visit the family home and stay over most weekends, which was still the arrangement in early 2020. He denies having been KB's carer, or being paid to care for her, but says that he would help with cleaning, shopping, and ironing.
- ii) JK told me that she knew GH to be AB's partner but she saw him only rarely at the house. Her evidence was that she would arrive at AB's house, sometimes waking KB up (indicating that KB had slept there overnight). She would help KB to get ready, to have breakfast, and then to go to the Day Centre. JK was not a master of details and appeared to me to be sometimes confused about what period she was being asked about (2020 or earlier), what days of the week she worked, and where she attended on KB. I accept that she did sometimes provide care for KB in the mornings at the family home but also that she attended on KB at the flat.
- iii) The evidence clearly establishes that JK did provide care for KB. She helped her with some personal care, dressing, food preparation and feeding etc. On the other hand, GH's role was as one of the family who would help out with some shopping or cleaning when he was at the family home, which from 2017 was mostly at weekends only, but he did not provide care services to KB.
- iv) Prior to about March 2020, KB did live at the flat and spent most nights there with CD but, when CD was engaged in her studies or on placements away from home, KB would stay at the family home. I am sure that she spent a lot of her

time at the family home even prior to March 2020. From March 2020, when the Day Centre closed and then lockdown began due to the Covid-19 pandemic, KB then lived full time at the family home with AB.

- v) I have found that AB was dishonest in her misuse of Direct Payments purportedly used to pay GH as a carer. The dishonesty by AB was not in using GH as a carer without disclosing his relationship to her or his immigration status, it was in using the funds meant to be used to provide for paid carers for KB, for other purposes. In pretending that he was a paid carer AB also had to hide the truth of their relationship. In reality GH did not provide care services for KB beyond what might be expected of a member of her family willing to generally help out when he was around.
- vi) As such, but for the dishonest financial arrangements, GH would still have had access to KB, as he had done for several years when living in the family home. It is not that the failure to follow guidelines from the Local Authority that carers should have police or work checks exposed KB to the risk of harm from GH, it was that GH's membership of the family exposed KB to the risk of harm. I shall return later to the issue of whether that risk was or ought to have been known to AB, CD or EF.
- vii) Had formal checks been carried out on GH he would not have been permitted to work as KB's carer because of his immigration status, not because of any past convictions for sexual assault or other potentially relevant offences. However, whilst he would have been prevented from being a paid carer (which in reality he was not) it would not have prevented him entering the family home and being in close proximity with KB as a member of the family.
- viii) On my findings in relation to financial arrangements, it follows that AB knew that GH was using a false identity, that he was working when he should not be working because of his immigration status, and that he, along with AB, was misusing the Direct Payments intended to pay for carers for KB. AB had good reasons therefore to believe that GH was capable of dishonesty.
- ix) In the course of these proceedings, during the course of assessment as a potential Special Guardian, AB has alleged that GH was abusive of her in their relationship. She reported that he was physically abusive towards her and manipulative during conversations and arguments. This led to GH moving out of the family home but she had kept the reasons for this to herself until these proceedings. This has come as a distressing surprise to her children CD and EF. GH denies her allegations. However, if they are true, then they gave AB a further reason not only to distrust GH, but also to believe that he was capable of physical violence.
- x) In the past GH had taken KB to a movement class but AB had received reports that he was uncaring of her when attending and so AB stopped arrangements whereby GH would take KB to places. This gave AB reason to be concerned about GH's care of KB.
- xi) Notwithstanding these causes for concern about GH, the evidence in this case does not disclose anything about GH's past conduct or general behaviour that

would have led AB or anyone else to suspect that he might be capable of sexually abusing or raping KB. Before the rape happened, there was no foreseeable risk that he would commit such a crime against KB or anyone else.

- xii) AB told the court that she would never leave KB alone with GH. However, she had no grounds to fear leaving them alone whilst she was in another part of the house, or for leaving them alone in the house for a few minutes to run an errand or to do some work for the Church. GH had lived in the family home for several years until 2017. He had maintained regular and substantial contact with AB and the family, including with KB. There is no evidence that he had ever touched her inappropriately before the rape.
- xiii) AB is clearly very committed to her daughter. Although I have found that she has been dishonest in relation to financial matters and thereby has deprived KB of additional professional care, she has never intended to do, or viewed herself as doing anything detrimental to KB. I am sure that the way AB saw things, she was extracting what was due to her from the Direct Payments. She was dishonest but she did not believe it was harmful to KB. She was KB's carer for a lot of the time and had been throughout her childhood. KB appears to have been well cared for in terms of her physical health and wellbeing, her relationships within the family, and her emotional wellbeing. Had AB had any belief that GH might sexually abuse or rape KB there is no doubt that she would have taken steps to prevent him having any access to her. AB did not have any such belief. She did not doubt that GH would treat KB as a member of his family and as a professed Christian of faith.

#### 40. The Circumstances of the Rape

- i) KB cannot speak to the events in late February or early March 2020 when she was raped by GH – she does not have the capacity to do so. There is no evidence that she has ever alluded to the events. I have referred to GH's accounts to the police in interview and to the Crown Court through his probation report. To this court he gave a new and different account. He said that AB had tricked him by leaving him alone with KB during the daytime having, as he said he believed, encouraged or coached KB to take off her clothes and go to him. AB had then returned after 20 minutes, earlier than expected, and found KB and GH having sexual intercourse. His evidence left me entirely unclear as to the motive AB would have for "tricking" him in this way. Moreover, it would be a curious plan by AB given that there was no history of KB being intimate with GH and, on GH's account, AB was only gone for 20 minutes. How could she possibly have known that on return she would find KB and GH having sexual intercourse even if she had encouraged KB to go to GH naked? GH had not previously alleged that AB had played such a role, it would be wholly contrary to AB's protectiveness and love of KB to do what GH alleged, and it is almost inconceivable that KB would be capable of following such an instruction. GH's allegations were wholly incredible and very hurtful to KB's family. By making such allegations GH showed, once more, his failure to take any responsibility for his actions. I reject without hesitation any suggestion that AB played any role in "setting up" a sexual encounter between KB and GH or that KB

approached GH in a sexualised manner. Nothing in her previous or subsequent conduct has shown any sexualised behaviour or such disinhibition.

- ii) However, I am sure that what GH told me was truthful to this limited extent – he raped KB when AB was out of the house. At the time when the rape occurred GH would have had no opportunity to rape KB anywhere except inside the family home. In my judgement, it is most unlikely that the rape took place when someone else was in the family home. GH is unlikely to have taken the risk of being discovered raping KB with someone else in the house. On the evidence I have received, KB is unlikely to have been silent in the circumstances which would have been foreign to her and therefore likely to distress her. The layout of the house is such that it would have been unlikely, if not impossible, for sexual intercourse to have taken place unnoticed by anyone else who was at home at the time. Considering all these matters alongside GH's own evidence, I conclude that it is highly probable that GH raped KB in the family home when no-one else was present.
- iii) Other than the admission that the rape took place when GH was alone with KB in the family home, GH's evidence about the rape lacks any credibility and I reject it. The Local Authority has not alleged that AB, CD or EF, were complicit in or present at the time of the rape or that they knew in the immediate aftermath what had occurred. The evidence establishes that on the balance of probabilities GH raped KB when left alone with her in the family home. That is his own evidence and it accords with the other evidence in the case. Accordingly, I do not accept AB's evidence that she never left KB alone with GH. She has maintained that stance throughout these proceedings: it is what she told the authorities and it was what she has told CD and EF. However, I find it not to be credible. AB had no reason to protect KB from GH in that way and it would be natural for her sometimes to go out from the house to run errands or to do some work associated with her Church. She was a very busy woman and could not take KB everywhere with her. Leaving KB with another family member would be an entirely natural thing for her to do. At the relevant time, AB regarded GH as a member of the family. I conclude that AB has misled the court, her children, and others about leaving KB alone with GH because she wants to avoid being accused of being negligent in relation to her daughter's care. She is afraid of being accused of allowing GH to rape KB by leaving them alone together and so she has denied ever having done so. I find that she did leave them alone, that it was natural to do so, and that she had no reason not to do so. There is no evidence that GH had acted inappropriately with KB previously, no evidence that he had been guilty of sexual assault or other sexually inappropriate behaviour with others previously, and he had spent a great deal of time with KB at the family home over several years without giving cause of concern that she needed protecting from him.
- iv) GH mentioned male lodgers as potential perpetrators to the police. In the light of his admission they can be discounted as perpetrators but, in any event, GH's evidence about lodgers was inconsistent with other evidence and I do not accept it. He appeared to allege that there were lodgers in the family home in February or March 2020, at the time of the rape, but there is no evidence to corroborate

that allegation. I accept the family's evidence that two men had stayed at the family home for a short period some months earlier.

41. Knowledge of the Pregnancy

- i) The arrangements for the care of KB changed when the Coronavirus pandemic began and lockdown restrictions were introduced. The Day Centre closed and KB lived with AB in the family home full time. JK stopped visiting; CD lived in the flat, EF was busy with his studies and going to the gym, and AB assumed all the care responsibilities for KB. Such were KB's disabilities that she would need assistance with personal care including at the time of her periods. The rape must have taken place in late February or very early March 2020 given the subsequent dating of the pregnancy. AB consulted KB's GP about missed periods for the first time by an e-consult (online form) on 30 July 2020. By then KB must have missed at least four and possibly five periods. AB wrote on the form completed on 30 July 2020, that the first day of KB's last menstrual period had been on 22 May 2020. This cannot have been correct.
- ii) On the same day, Thursday 30 July, a telephone consultation took place. AB told the GP that there had been "several months" of amenorrhoea, and that KB "used to have slightly irregular periods, but was every month before this ... not sexually active and never has been but noticed breasts are swollen and stomach is swollen." I take this to be reliable evidence that KB's periods had been regular for some time prior to March 2020. The GP's advice was to do a pregnancy test and to call back if positive. The test was done, and repeated, and both were positive but AB did not call the GP back. Instead she, and CD and EF (who knew of the positive test on 30 July but were not party to the advice given to AB by the GP) waited until the arranged appointment on Monday 3 August. At that appointment it was recorded "AB seemed initially cheerful in the consultation – stated she would have to look after the baby and that she was glad KB was not suffering from any sickness ... [she] seemed to be expecting KB to continue the pregnancy." The GP pointed out that as KB was unable to consent to sexual intercourse "we would be concerned about rape" which "seems to have come as a shock to AB." In relation to KB's periods, it is recorded by the GP that "she knows sometimes periods can be irregular and that is why she did not think about it much more since then and only after noticing the stomach swelling and breast swelling she thought something is not right."
- iii) Dr Clarke, Consultant Obstetrician and Gynaecologist, told the court that she would not be surprised at all that AB did not know KB was pregnant as it was the last thing she would have imagined. No-one ever expected KB to be pregnant and that lack of expectation will have affected their views as to why she had missed her periods and put on weight. The senior GP at the practice also gave evidence saying that he believed it would be "possible to miss [that KB was pregnant] at this stage in the pregnancy." He thought that given KB's normal weight it would be possible even at 24 weeks pregnancy not to notice that KB was pregnant from her physical appearance.

- iv) In her police interview AB said that she thought something might be “wrong” with KB in May and that she tried to make an appointment at the GP but was unable to do so. There is no record of any contact with the GP surgery in May 2020 but there were unrelated e-consultations made by AB in June and early July 2020 with no mention of concerns about missed periods. I find that AB did not, as she says she recalls, contact the GP surgery about KB’s missed periods in May 2020. She may have thought about doing so but she did not actually make contact.
- v) CD had no dealings with KB’s personal care from about the beginning of March to the end of July 2020. She would have seen KB but I have already noted the senior GP’s view about KB’s physical appearance. I accept her evidence that AB did not tell her that KB had missed a number of her periods.
- vi) Several professionals noted that AB’s attitude to the discovery of KB’s pregnancy was strikingly complacent. She did not seem alarmed or concerned for KB but, rather, appeared to be happy or at least remarkably resigned to the fact that she was going to have a baby. The Local Authority contends that AB’s attitude indicates that she had known about, and become reconciled to, the pregnancy for some time before alerting healthcare professionals. AB’s response to questioning about this during the hearing, supported by CD and EF, was that she had spent much of KB’s life being determinedly positive so as to avoid distress to KB. Also, her Christian faith and general personality gave her strength to present a cheerful demeanour even in difficult circumstances. She would put on a “mask” to present to the world. There may also have been an element of denial and an inability to confront the implications of the pregnancy including that KB had been raped.
- vii) The Local Authority initially sought to rely on evidence that a list of boy’s names had been found on AB’s computer, apparently downloaded prior to the diagnosis of the pregnancy. This, it contended, suggested that AB knew of the pregnancy at an earlier date. However, in large part due to investigations by CD, ultimately the Local Authority has accepted that it cannot rely on that evidence to prove that AB or CD knew of or suspected the pregnancy prior to the end of July 2020. It does maintain that allegation but does not rely on the list of names as evidence to prove it.
- viii) Weighing all the evidence with care - some of which tends to show that AB is likely to have known of the pregnancy before the positive tests, some of which tends to show that AB is not likely to have known of the pregnancy before that time - I am not persuaded that on the balance of probabilities AB deliberately hid KB’s pregnancy knowing that she was pregnant. Neither am I persuaded that CD participated in KB’s personal care in February to July 2020 and would have known from dealing with KB’s personal care that she had missed her periods from March 2020 onwards. I accept that for CD the news of the pregnancy at the end of July 2020 was a complete surprise.
- ix) By the end of May 2020 AB will have known that KB had missed her periods for three months having recently had regular periods. KB may have had some irregularity in her menstrual cycle previously but AB told KB’s GP in August 2020 that more recently KB’s periods had been regular up to the point where

she stopped having them. I accept AB's evidence that it did not cross her mind that KB had missed her periods because she was pregnant. She had no basis for believing that KB had engaged in sexual intercourse. I have found that GH raped KB when AB was absent and that AB was not aware of what had happened at the time or in the aftermath. It was unthinkable to her that KB might be pregnant. I accept her evidence that she initially thought that KB had just missed her periods because from time to time that can happen and because KB's periods had been irregular in the past. Nevertheless, by the end of May it was evident that KB had a health issue having not had a period for three months. Furthermore, on the basis of AB's oral evidence, it appears that by the end of June 2020 she noticed that KB was putting on weight. I accept AB's evidence that she ultimately thought that KB might have fibroids rather than that she might be pregnant, but AB was able to contact the GP's surgery, including using their on-line referral system, and she should have done so by the end of June 2020 given the several missed periods and unexplained weight gain. I emphasise that I accept that it did not cross AB's mind that KB might be pregnant until very close to or at the time when the pregnancy was confirmed. CD told me, and I accept, that AB did not discuss the missed period with her. She did discuss KB's weight gain which AB thought might be due to fibroids and CD thought might be due to a bowel problem. I do not criticise CD for failing to ensure medical advice or attention was secured for KB before the end of July 2020.

42. Management of the Pregnancy after 3 August 2020

- i) At no stage after it was discovered that KB was pregnant, did AB, CD or EF raise the possibility of termination of the pregnancy. There was no urgency by them upon conducting the positive pregnancy tests at home on 30 July to alert the GP. They waited until the appointment on 3 August to inform the GP of the positive tests. However, the contemporaneous medical records show that following the appointment on 3 August 2020, neither was there any urgency on the part of healthcare professionals to address the issue of termination. KB was taken to the Maternity Assessment Unit on 3 August and a scan confirmed the pregnancy which was dated at 22 weeks and 3 days. The first appointment with an obstetrician appears to have been with Dr Clarke on 27 August 2020 when KB was 25 weeks pregnant. Dr Clarke says that she "confirmed with AB that termination of pregnancy was not something that she or the family were considering and AB explained that she would prefer KB to be delivered by elective caesarean section rather than have a trial of labour." Dr Clarke's next involvement was on 27 September 2020 when KB was at over 29 weeks of pregnancy and Dr Clarke's view was that a caesarean section would be in KB's best interests and proposed to carry out a sterilisation procedure at the time of the elective caesarean section. Applications were made to the Court of Protection in relation to best interest decisions regarding the management of the pregnancy, delivery and sterilisation (not ultimately pursued) on 30 October 2020.
- ii) Given the importance of the 24<sup>th</sup> week of pregnancy to the conditions for performing a termination under the Abortion Act 1967, the correct presumption that KB could not consent to intercourse and so had become pregnant after rape,



and the impact of continuing the pregnancy for KB, the absence of urgent discussion about termination with the family by healthcare professionals following the scan on 3 August 2020, at 22 weeks 3 days, is troubling. AB's noted reaction can be explained by denial, desire to protect KB from distress, her faith, naivety, or a number of other psychological factors at play, but it was incumbent on healthcare professionals to note the urgency of the decision whether to terminate the pregnancy, to discuss that with AB and the family, and to consider whether an application to court was necessary. I note, as submitted by Ms Keehan in her helpful written submissions, that it is not at all certain that had a best interests decision been made in early August 2020, that it would have resulted in termination of the pregnancy. However, this was clearly something that should have been discussed with the family whatever indications they have about their initial views.

- iii) I have already found that AB, CD and EF did not know that KB was pregnant until 30 July 2020. The evidence does not establish that they colluded to avoid KB having a termination in the immediate aftermath of the discovery of the pregnancy. Having heard them give evidence, I am satisfied that none of them held religious or moral views against abortion in any circumstances. Had termination been addressed with them between 3 August 2020 and the 24<sup>th</sup> week of pregnancy, they would have seriously considered what was in KB's best interests, whether or not that consideration would have resulted in a decision to terminate.

### **Findings on the Local Authority's Allegations**

- 43. The Scott Schedule, with my findings in relation to each allegation, is at Appendix One to this judgment. Given my evaluation of the evidence in this case I make the following findings in relation to those allegations:
  - i) GH raped KB in or around late February or very early March 2020. He did so when they were alone in the family home. There is no evidence that he raped her on any previous or subsequent occasion. I dismiss any suggestion that AB was complicit in encouraging or facilitating the rape, or that she knew it had happened. For the avoidance of doubt, neither CD nor EF knew about the rape or did anything to allow it to happen.
  - ii) AB having caring responsibilities for KB, a disabled and dependent woman, misused the Direct Payments made by the Local Authority for caring provision by causing direct payments intended for the employment of paid carers for KB, to be diverted to the financial benefit of herself and her husband, GH, in breach of the terms and conditions of the payments, to assist in the care of KB, evidencing a lack of transparency and dishonesty. By misusing direct payments in this way, AB prevented KB from having more paid care and assistance which would have been of benefit to her. AB thereby placed her own financial needs above the care needs of her daughter.
  - iii) AB did not follow guidelines from the Local Authority to seek police checks or work checks when employing a carer. However, GH was not truly employed as

a carer for KB but was named as a paid carer in order to divert direct payments to the benefit of AB and GH. It is not proven that had police or other checks being performed by AB that GH would not have had unfettered access to and availability/opportunity to abuse KB, because GH was a member of the family and would have had such access in that capacity. Therefore there is no link between the dishonest misuse of the direct payments and the rape or any failure to protect KB from being raped by GH. I do not consider that AB was negligent or at fault for leaving KB alone with GH on the occasion of the rape, as I have found she did. I criticise her for failing to admit that she left them alone, but not for leaving them alone. There was nothing in GH's history or his previous dealings with KB to give rise to a foreseeable risk that he would act as he did.

- iv) The making of the LPA was a result of erroneous professional advice and was not an abuse of their positions of trust by AB, CD and/or EF. However, separately from the making of the LPA, AB, but not CD or EF, caused KB's name to be used in relation to an application for a bank account in an African country, using KB's name as the Secretary of the Church despite her known lack of capacity. By doing so AB acted dishonestly. It is not proved that the application was relied upon by the bank and that a bank account was opened as a result of the dishonest use of KB's name and purported signature.
- v) It is not proved that AB and/or CD knew KB was pregnant prior to positive pregnancy tests on 30 July 2020. AB ought to have sought medical attention for KB for missed periods and weight gain by the end of June 2020 but it is not proved that AB knew or ought to have known that KB was pregnant before 30 July 2020. CD was not involved in KB's personal care between February and August 2020 and did not know and had no grounds to know that KB was or might be pregnant before 30 July 2020.
- vi) It is not proved that AB and/or CD and/or EF and/or GH sought the pregnancy to go to full term for reasons of financial gain or other motive not in the interests of KB. In closing submissions the Local Authority accepted that there is limited evidence to make out this allegation against EF or GH. In my judgment it ought to have made a similar concession in relation to CD. As for AB, firstly I have found that she did not know of the pregnancy before 30 July 2020 (neither did CD or EF). Secondly, although the family delayed from 30 July 2020 to 3 August 2020 in informing the GP or the positive pregnancy test, I am satisfied that they did so when in shock and mindful of an appointment having been made. In any event, only AB had been party to the advice to contact the GP if the test was positive. The delay of four days did not materially affect the decision to continue the pregnancy. I am not satisfied that the evidence proves that AB or CD took any steps to prevent or delay medical professionals knowing about the pregnancy once they knew about it nor that they avoided, prevented or delayed discussions about termination. Indeed in my judgment, the greater responsibility for the failure expeditiously to consider termination lies with the healthcare professionals. Further, no financial or other motive for concealing the pregnancy or continuing it has been satisfactorily established.
- vii) It is not proved that AB and/or CD colluded to ensure the pregnancy would not be noted by medics until a stage in all likelihood too late to terminate and/or expressed a wish for the pregnancy to go full term in the full knowledge that

Mother could not care for a child; and considered names for the baby, including the subsequent chosen name, prior to full disclosure of the pregnancy to professionals. As already noted, the Local Authority does not rely on the evidence of the finding of a list of names on AB's computer. Furthermore, the same considerations as I have set out in the previous sub-paragraph apply to the allegation under consideration here.

- viii) In relation to the eighth, summary allegation, I find that AB has dishonestly misused the system of direct payments which were intended exclusively for the benefit of KB but which AB misused to divert monies to herself and GH for their financial benefit. However, such dishonest misuse did not afford GH access to KB, which he used to rape her, which he would not otherwise have had as AB's husband. GH's rape of KB was opportunistic. It occurred when they were alone in AB's home. There is no evidence that he has raped her on any other occasion. AB, CD and EF are not responsible for GH having raped KB by intentionally or negligently permitting him or allowing him the opportunity to do so. They had no grounds to believe that leaving KB alone with GH would expose her to the risk of being sexually assaulted by him. AB ought to have sought medical attention for KB by late June 2020 and had she done so the pregnancy is likely to have been detected about one month earlier than was in fact the case. However, AB did not know and it is not proved that she ought to have known that KB was showing signs of pregnancy. What might have been obvious signs of pregnancy in a sexually active woman, were not obvious signs of pregnancy in a woman whom it was reasonably assumed had never had sexual intercourse. KB and LB were put at risk of pre-birth complications and the risk of harm during delivery, and LB is at risk of future significant emotional harm when he learns of the circumstances of his conception. However, those risks were not the foreseeable consequences of any deliberate or negligent acts or omissions by AB, CD or EF.
44. Although not alleged I have heard sufficient evidence to persuade me that on the balance of probabilities after the pregnancy was identified, AB knew or ought to have known that GH was a possible perpetrator and that by evasion and lack of positive co-operation she failed to share relevant information with the police that could have led to the earlier identification of GH as the prime suspect. AB did not tell the police what her true relationship with GH was, that GH spent time with KB and, as I have found, that she would sometimes leave him alone with KB. I am sure that she hid these facts because she was afraid that the truth would be shameful to her and the family and might expose her dishonest financial dealings. Although AB, CD and EF have chosen not to be forthcoming, it is difficult to be sure what AB told CD and EF about leaving KB alone with GH, but on balance I accept their evidence that she inaccurately told them that she had not left GH and KB alone.
45. The parties will need time to reflect on these findings. I shall invite the parties to agree directions for consideration of the welfare decisions that now have to be made in respect of the future arrangements for LB. To date the family has not made detailed proposals for those arrangements. I hope that they will have learned through the finding of fact process that broad generalisations will not be sufficient. Evasiveness will not help their cause. If, for example, CD continues to put herself forward as a permanent carer for LB then she will need to engage fully with the Local Authority to work out what the detailed

arrangements would be. By offering herself as a Special Guardian for LB she would be taking on a very significant commitment which requires very careful prior consideration.

46. It is nearly 18 months since LB was born and so, although proper consideration is required in relation to welfare decision, time is of the essence in concluding the next part of these proceedings.

## APPENDIX ONE

### SCOTT SCHEDULE

<b>Allegation Number</b>	<b>Date of Allegation</b>	<b>Allegation</b>	<b>The Court's Finding</b>
1	In or around February 2020	GH raped KB, a woman unable to consent to any sexual act and for whom GH had paid caring responsibilities, evidencing a	In or around later February or very early March 2020, GH raped KB a woman unable to consent to any sexual act and for whom GH

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		clear breach of trust the deliberate abuse of a dependent person, and a wilful disregard of inflicting significant harm.	had caring responsibilities, evidencing a clear breach of trust, the deliberate abuse of a dependent person and wilful disregard of inflicting significant harm
2	In or around March 2019 to November 2020	AB having caring responsibilities for KB, a disabled and dependent woman, misused the Direct Payments made by the Local Authority for caring provision by employing her husband, GH in breach of the terms and conditions of the payments, to assist in the care of KB evidencing a lack of transparency and an element of dishonesty.	AB having caring responsibilities for KB, a disabled and dependent woman, misused the Direct Payments made by the Local Authority for caring provision by causing direct payments intended for the employment of paid carers for KB, to be diverted to the financial benefit of herself and her husband, GH, in breach of the terms and conditions of the payments, to assist in the care of KB, evidencing a lack of transparency and dishonesty. By misusing direct payments in this way, AB prevented KB from having more paid care and assistance which would have been of benefit to her. AB thereby placed her own financial needs above the care needs of her daughter.
3	In or around March 2019 to November 2020	AB failed to follow the strong guidelines of the Local Authority in not seeking police checks, nor work checks, when employing a carer, which had she done so may have prevented GH from having unfettered access to and availability/opportunity to abuse her daughter, placing her own needs above that of her daughter's	AB did not follow guidelines from the Local Authority to seek police checks or work checks when employing a carer. However, GH was not truly employed as a carer for KB but was named as a paid carer in order to divert direct payments to the benefit of AB and GH. It is not proven that had police or other checks being performed by AB that GH would not have had unfettered access to and availability/opportunity to abuse KB because GH was a member of the family and would have had such access in that capacity.

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4	In December 2019, and in or around July 2020 and on a date to be determined	AB and/or CD and/or EF abused their positions of trust in having a Lasting Power of Attorney and care of KB in financial matters including but not exclusively, in relation to a bank account in and African country which held KB's name as the Company Secretary despite her known lack of capacity, notwithstanding that the LPA was invalidly created.	<p>The making of the LPA was a result of erroneous professional advice and was not an abuse of their positions of trust by AB, CD and/or EF.</p> <p>AB, but not CD or EF, caused KB's name to be used in relation to an application for a bank account in an African country, using KB's name as the Company Secretary despite her known lack of capacity. By doing so AB acted dishonestly. It is not proved that the application was relied upon by the bank and that a bank account was opened as a result of the dishonest use of KB's name and purported signature.</p>
5	During and between February 2020 and August 2020	AB and/or CD failed to take KB who was in their care to seek medical attention in relation to pregnancy when signs of KB's pregnancy would have been first apparent to them due to their intimate care of KB, thus failing to protect both KB and her then unborn child	It is not proved that AB and/or CD knew KB was pregnant prior to positive pregnancy tests on 30 July 2020. AB ought to have sought medical attention for KB for missed periods and weight gain by the end of June 2020 but it is not proved that AB knew or ought to have know that KB was pregnant before 30 July 2020. CD was not involved in KB's personal care between February and August 2020 and did not know and had no grounds to know that KB had missed several periods or might be pregnant before 30 July 2020.
6	During and between February 2020 and November 2020	AB and/or CD and/or EF and/or GH sought the pregnancy to go to full term for reasons of financial gain or other motive not in the interests of KB	This allegation is not proved.
7	During and between February	AB and/or CD colluded to ensure the pregnancy would not be noted by medics until a stage in all likelihood too late to terminate and/or expressed a	This allegation is not proved.

	2020 and August 2020	wish for the pregnancy to go full term in the full knowledge that Mother could not care for a child; and considered names for the baby, including the subsequent chosen name, prior to full disclosure of the pregnancy to professionals	
8		<p>As a result of the matters outlined above AB and/or CD have abused their duty of care and failed to protect the mother and thus LB by (i) intentionally or negligently permitting GH to have unsupervised access to KB (ii) failing to take KB for medical attention when they knew or ought to have known that there were signs of pregnancy, thus putting the mother and LB at risk of prebirth complications and the risk of harm during the necessary caesarean birth process, and (iii) exposing LB to the risk of future significant emotional harm when he learns of the circumstances of his conception and birth.</p>	<p>These allegations are not proved.</p> <p>AB has dishonestly misused the system of direct payments which were intended exclusively for the benefit of KB but which AB misused to divert monies to herself and GH for their financial benefit. However, such dishonest misuse did not afford GH access to KB, which he used to rape her, which he would not otherwise have had as AB's husband.</p> <p>GH's rape of KB was opportunistic. It occurred when they were alone in AB's home. There is no evidence that he has raped her on any other occasion. AB, CD and EF are not responsible for GH having raped KB by intentionally or negligently permitting him or allowing him the opportunity to do so. They had no grounds to believe that leaving KB alone with GH would expose her to the risk of being sexually assaulted by him.</p> <p>AB ought to have sought medical attention for KB by late June 2020 and had she done so the pregnancy is likely to have been detected about one month earlier than was in fact the case. However, AB did not know and it is not proved that she ought to have known that KB was showing signs of pregnancy.</p> <p>KB and LB were put at risk of pre-birth complications and the risk of harm during delivery, and LB is at risk of future significant</p>

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			emotional harm when he learns of the circumstances of his conception. However, those risks were not the foreseeable consequences of any deliberate or negligent acts or omissions by AB, CD or EF.
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