



Neutral Citation Number: [2022] EWFC 48

Case No: LS21C00341

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2022

Before:

MR JUSTICE POOLE

Between:

Bradford MDC

Applicant

- and -

(1) A Mother

(2) A Father

Respondents

T

Intervenor

Ms Ford (instructed by the Local Authority Legal Department) for the Applicants
Mr Greatley-Hirsch (instructed by SGB Law) for the First Respondent
Ms Sanders (instructed by Portobella Solicitors) for the Second Respondent
Mr Burdon (instructed by Finn Gledhill Solicitors) for R
Mr Hargan (instructed by Wilkinson Woodward Solicitors) for S through his Children's
Guardian
Mr Wilkinson (instructed by WillisCroft & Co) for the Intervenor

Hearing dates: 3, 5, 6 and 9-12 May 2022

Judgment

Approved Judgment**Mr Justice Poole:**

1. This judgment follows a finding of fact hearing in public law proceedings brought by Bradford MDC in relation to two children, R, a girl born in 2004 and now aged 17, and S, a boy now aged 12. The Respondents are the children's parents to whom I shall refer as the mother and father in this anonymised judgment. There is a third child of the family, T, who is now an adult male aged 20, and who is an intervenor in these proceedings. The parents, T, and R were all born in Pakistan. The family moved to Country A (in continental Europe) when T and R were young. S was born in Country A in 2010. The family moved to England in 2017.
2. The proceedings were begun following allegations made by R on 7 June 2021 that T had sexually abused her when they were younger, that she had informed her mother of what T had done but she had dismissed her complaints, and that the father had made threats of violence against her after she had raised her allegations with her mother. The nature of the allegations and the manner in which R raised them are discussed later in this judgment. The Schedule of Findings sought by the Applicant appears at Appendix One to this judgment. I set out the details of the allegations in Appendix Two which is to remain confidential. My findings appear at Appendix Three.
3. The identities of the children, their parents and T are protected because it would be against the interests of, and positively harmful to, the children for their identities to be known. I have not included the details of the allegations of sexual abuse in the body of the judgment to guard against prurience and because those details need not be known for the judgment to be understood.
4. Upon R making the allegations, T and the mother were arrested. T was interviewed by police on 7 June 2021. T and the mother were bailed on conditions and both R and S were made subject to interim care orders in favour of the Applicant. Later S was returned home to live with his parents, T having moved out of the family home. S, who has a learning disability and is non-verbal, remains subject to an interim care order. On turning 17, R consented to being accommodated by the Local Authority under s.20 of the Children Act 1989.
5. S has a Children's Guardian appointed. R is separately represented. I have been provided with a 713 page bundle of written evidence which includes a transcript of an Achieving Best Evidence (ABE) interview with R on 7 June 2021. References in this judgment are to the page in the hearing bundle and the first line of the relevant extract. R's interview was filmed and I have watched it. I have also listened to the audio recordings of interviews with the mother, father, and T, and read transcripts of those interviews. I have had regard to witness statements including but not limited to those from MB, supervising social worker, Ms K, the pastoral lead at R's current school, and Ms A, a family court advisor engaged by Cafcass who previously acted as R's Children's Guardian. I have heard oral evidence from CY, social worker, Ms K, safeguarding lead at R's school at the time when she made her allegations, the mother, father and T. R has not given oral evidence and no party applied for a Re W hearing to determine whether she should give evidence. The mother and father gave evidence through interpreters.

Approved Judgment**The Law**

6. 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. From those judgments and the authorities reviewed in them, I derive the following principles as applicable to the present case:

- 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*:
- 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

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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 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.
- ix) 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."

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In this case the Local Authority alleges that T is lying about his behaviour towards R, and that the mother and father are lying about R having made known her allegations to her mother and her father having known of the allegations and made threats to R in connection with them. T alleges that R has fabricated all but one of her allegations.

7. There is no medical or expert evidence in this case. The evidence in support of the allegations of sexual abuse comes from R alone. The events she described were not witnessed. T disputes all but one of the allegations. The allegations occurred within the home, or within the home of a member of the extended family in Pakistan. They are historic, the last alleged occurrence of abuse being at least four years before the allegations were made. R was between the ages of about 9 and 12, and T between the ages of about 11 and 14 at the time of the alleged abuse. The consequences of R having made the allegations and of the findings made by this court are far reaching. Accordingly, the court has to approach the evidence with great care, although the standard of proof remains on the balance of probabilities.
8. 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.
9. My first involvement in this case has been to conduct the finding of fact hearing. The parties and the court had previously considered whether the allegations required a finding of fact hearing and had determined that such a hearing was necessary and relevant to the welfare decisions that will be for the court to decide. Although the making of findings is of great importance to R, T, and their parents, the need to make findings is not as obviously necessary to the welfare determinations involving S. I considered the recent Court of Appeal judgment in *K v K* [2022] EWCA Civ 468. However, T was heavily involved in S's care, S is highly vulnerable, the parents may be found to have failed to protect S, and since the court had previously decided that a finding of fact hearing was necessary, I was content to proceed.

The EvidenceR

10. I have viewed R's police interview with care and evaluated it alongside all the other evidence in this case including evidence about the allegations made by R from CY, Ms A (R's previous Children's Guardian), and Ms K. The police interview took place on the same day that R had first made her allegations to Ms K at her school. The mother and father's evidence was that R was a good daughter: she worked hard at school and helped her mother at home. Neither they nor T nor any other witness gave any evidence that R had a history of making up allegations, lying, fantasising, or otherwise being unreliable in what she said to others.
11. R elected not to have a responsible adult present at the interview. The first part of the DVD film of the interview shows R alone in the interview waiting for the interviewing officer to arrive. She is seen to be blowing and taking deliberate, deep breaths and

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appears to be preparing herself for the interview ahead. On being asked to introduce herself for the recording she gives her name and adds, “and I am a survivor of sexual abuse”. Early in the interview she speaks more or less continuously for about fifteen minutes setting out all the allegations against T which are now for the court to determine. It is clear that T had given a lot of thought to the allegations before the interview. By her own evidence during the interview she had researched the issue of sexual abuse on the internet. Initially she had been researching the Black Lives Matter movement, then the Me Too movement. She had spoken to a school friend about her experiences over a period of at least six months. She chose to make her allegations on the day she finished her last GCSE. Evidently she wanted to focus on her examinations before sharing her allegations. There is no evidence that R had spoken to a counsellor or to any professional about the alleged abuse prior to 7 June 2021. She may have been influenced by her friend or by what she had read on the internet, but the impression watching and listening to the interview is that she is speaking her own mind, for her own reasons, having given a great deal of thought before reporting the allegations to the school and the police. She appears to me to be very aware of the importance of the allegations she is making and of the possible ramifications for her and the family.

12. R speaks intelligently about the events in question and perceptively about her feelings. She does not show any particular animosity to T but rather states clearly that what he did is wrong. She is sympathetic to her mother even whilst telling the police that her mother did nothing to protect her. Once R has spilled out her account in her initial long answers, and begins to be questioned in detail, she appears to be spontaneous and direct, she is able to give details in many of her answers, and, when asked, she draws sketches to assist without hesitation. Furthermore, she begins to grimace when remembering certain unpleasant details, pauses to compose herself and then, about fifty minutes into the interview, she becomes very upset and has to take a 15 minute break. The immediate trigger for her becoming overwhelmed with emotion at that point is when she says that she loves her mother.
13. R gives pertinent details about how she felt at the time, about what she felt when he guided her hand onto him, and about the rooms where incidents occurred. It would be surprising if she could give a precise chronology of events but she is able to put events in sequence and give approximate dates, and she is consistent in that respect.
14. There is no sense of exaggeration and she does not over-dramatise her account. It is noteworthy that she makes no allegations from the time when the family moved to England. Furthermore she is very specific about the lack of penile penetration.
15. R states that in 2018 the family, then living in Bradford, had visitors including a young girl aged about 3 to 4 years old. R was asked to help the girl go to the toilet. When in the toilet R says that T was looking through the door into the toilet so R stood in front of the girl to protect her and T moved away [G144, line 11]. This caused her concern that T might turn his attentions to other children. For the same reason she was concerned that T would bathe S who was vulnerable and unable to verbalise.
16. One discordant note in R’s allegations is that when referring to T licking her ear and kissing her on the lips she said that he smelled of sex. It is an odd expression for her to have used in all the circumstances. On the one hand it might be said to demonstrate authenticity – that she remembered a smell – on the other it is a very adult expression for a young and inexperienced person to make. There is also an apparent inconsistency

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in R's account of the bathroom incident when she was nine years old. In her police interview at [G157, line 26 onwards] R describes what happened. As set out in the confidential Appendix Two to this judgment, when she described that incident to Ms K there was an additional important detail that she did not mention to the police.

17. R says that she alerted her mother to the fact that T had spied on her, R, when she was in the bathroom in Pakistan. She told the police that her mother had advised her against telling the father and that her allegation was just laughed off, leaving R feeling that it was her who was "filthy" [G142, line 40]. However, in her first statement CY says that R had informed her that in 2015 her mother had said "boys will be boys" and that she should tell her father. R told CY that she had told her father during the holiday in Pakistan and that he had told T off in a "laughing way". So R has been inconsistent as to whether she told her father about the spying incident in 2015.
18. During lockdown, R spent a lot of time alone in her room and she used the internet to research sexual abuse. She told the police that she decided to confront her brother and to tell her mother about what had happened. She says that she told her mother "everything" [G144, line 26]. CY's note of her conversation with R on 10 June is that R said that when she told her mother, her mother "hugged her because she was crying." [C157]. However, R then confronted her brother, accusing T of having stolen her innocence. Her mother called her "crazy" and said she was destroying the family and that no-one would marry her. R felt suicidal. [G144, line 22]. This happened in 2020. R said that she did not blame her mother who was brought up in an "ignorant" household.
19. R did not tell the police that she had spoken directly to her father about what T had done, but she presumed that her mother had told him. Also, R made references in family conversations, in front of her father, about T going to prison. R told the police of a culture that did not tolerate children who brought dishonour on their family – they could be killed. She was asked about whether that had been said to her,

Er, my father like, you know, he, he just, he used to say stuff like, you know, "We can kill you off," er, like, "We can kill, we can kill you and throw you in a lake and no one would know. Like, if you go out, er, like, if you, er, if you tell someone and all this, er, send you to a foster house and you'll just get abused there."

DC GW: Did your dad know what was happening as well then?

R: No. I think, I think my mum probably told him cos, you know, I just used to make... after the, er, incident, like, after I told my mum about it, er, I started making jokes about it, like I started making jokes about like, you know, my brother going to jail, like, you know, let's just say, er, what is my, what shall I give to my brother as a birthday gift and obviously you know he shall go to prison and my parents used to get angry at me but I just thought, you know, like, why, why can't I say, like, he deserves to be in jail.

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DC GW: Yes. You know when your dad used to talk about throwing you in a lake and no one will know and we'll kill you—

R: Yeah, like, I don't think he actually meant it.

20. At some point in the summer of 2020 R contacted the NSPCC helpline or possibly Childline. On her own account she discussed feeling trapped within her family but not the allegations of sexual abuse nor the alleged threats from her father.
21. I have a statement given to police on 1 July 2021 from a school friend of R's whose identity remains confidential. I shall refer to her as G. She says that in or around November or December 2020 R confided in her that when she was about 7 or 8 years old and living in Country A her brother had told her to go to the bathroom with her and to get undressed. She then reports an account that is similar to the one given by R to the police. A day or so later R then told G that her brother had been threatening and blackmailing her to take naked pictures of herself to send to him. G could not recall if R had told her when this had happened. R also told G that her brother had asked her to touch his penis when she was about 10 years old, and that on another occasion she had seen her brother looking "inappropriately" at a young girl visiting with her family, when she had been in the bathroom. G told the police that R had told her that she had informed her mother about what her brother was doing but her mother had said that it was normal for boys to do that and had blamed R for what had happened, telling her it would damage the family honour. G tried to persuade R to speak to the safeguarding teacher but R wanted to wait until after her examinations and so it was in early June that G went with R to speak to the Ms K. G's evidence that R told her she was 6 or 7 years old when the bath/shower incident occurred is inconsistent with R's account to the police that she was 9. However, I do not regard that as a significant inconsistency: G may have misremembered what R had told her. Alternatively, R may have reflected more on the timing of the incident before giving her considered account to the police.
22. Ms K was the first professional person outside the family to whom R made her allegations. Ms K was the safeguarding lead at R's school. R went to speak to Ms K with her friend, G, on 7 June 2021. Ms K told the court that she made contemporaneous notes by typing them into the Child Protection Online Monitoring System (CPOMS) record during the discussion. She contacted the police and then children's social services. She did not discuss the allegations further with R. She did return to her CPOMS record, which she had left open to add to it. She referred to these additions as "elaboration" but she meant that she added comments about R's demeanour and about what comments R herself had made during the meeting. She closed the CPOMS record in the early afternoon of 8 June 2021 and she made a police statement using the CPOMS record that same day. There are inconsistencies between the CPOMS record and the police statement including an important detail of the incident R had alleged had occurred in the shower/bath when she was nine. This is addressed in the confidential appendix two to this judgment. It is regrettable that Ms K did not record her contemporaneous notes of the discussion on 7th June 2021, close that record, and then open up another record to write up her reflections, the context, how R had presented and so forth. Then the court would know more clearly what was said by R on 7th June and what was comment by Ms K. Some criticism was made of Ms K for referring to R's allegations as "disclosures", but I do not find that Ms K pre-judged the truth of the

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allegations made. Her role, which she fulfilled, was to listen to and record the allegations and to alert the appropriate authorities whilst looking after R's welfare. She did that, albeit her notetaking might have been more transparent if she had done it in the manner I have suggested. Given the way in which the notes were recorded I find it difficult to rely on any apparent discrepancies between what she recorded and what R subsequently said to the police save that I accept that what she recorded in quotation marks was what she contemporaneously recorded R as saying to her.

23. The social worker, CY, attended the school and spoke to Ms K. R had already been taken to the police station so CY followed her there. She made arrangements for R and S to be placed with foster carers that night. She visited R on two or three subsequent occasions. Her involvement ended on 11 August 2021. On 10 June 2021 she visited R and noted:

“R said she told mum again in lockdown 2020 and told her everything from the beginning, she said mum hugged her because she was crying. R said she confronted her brother and she shouted at him, which mum said to her your crazy and destroying the family. R discussed the comments she alleged her father says to her about shame and people end up in the lake, R said that dad would always make comments like this and dad would say comments like this about her wanting to wear skirts and he wouldn't let her wear things like this.”

It was pointed out that R was wearing a skirt during the police interview – in fact, she was wearing her school uniform which included a skirt over thick leggings.

24. R has not waived in maintaining her allegations. Even when she knew that S had been returned home with protective measures including T having moved out of the family home, and when she had been advised that whether or not her allegations were believed by authorities, she would not be compelled to return home and could live independently, she did not withdraw her allegations. She has had some difficult experiences to confront whilst in a foster placement. She has been distressed to be apart from her family, including S and she took the view that she did not want her parents to be questioned in court about the allegations she had made. However, she has maintained the allegations throughout.

T

25. T was a thoughtful and intelligent witness who gave careful consideration to the questions asked. T was interviewed by police on the same day as R. He elected not to have a solicitor present. Early in the interview he was asked if he knew anything about assaulting his sister in a sexual way and he answered, “No, I don't think so.” [G217, line 13]. He was later asked whether he recalled showing pornography to R when she was younger, and was given a specific detail about the pornography that R had said she recalled. He replied, “Not really, no.” [G231, Line 13]. He was asked about the shower/bath incident which R had alleged had occurred when she was 9 years old, “I don't think I remember it.” [G231, line9]. Later at [G234, line 25] he said, he did not think it had happened, “but I can't say that with certainty because I can't sort of remember anything from those years ...” He was asked about the “fashion games”

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during which R alleged he had stroked her vagina. Was that true? He initially responded, “No I don’t think so.” [G232, line 15] before clarifying that it was not true.

26. At court, T emphasised that when he told the police he did not “remember” an alleged incident, he had used that word because the interviewing officer had specifically asked him if he had “remembered”. In fact, the incidents he said he did not remember did not happen.
27. Less equivocally, in interview T denied “with certainty” that he had placed R’s hand on his penis [G232, line 2] and that he had taken photographs of R.
28. As to the allegation about sucking R’s ear and kissing her neck and lips, T said to the police, “Oh yeah, I think that happened, yeah. Yeah that was Er I think I was. I don’t know, 15/16 or something, not 15/16, 13 or 14.” [G232, line 21]. At G233 line 21 he said,

“I think, it wasn’t intentional, I didn’t plan to do that, er, I never looked at my sister like that. I used to, I know I shouldn’t say... I shouldn’t speak like that each other but yeah, we had a good relationship before, we used to play football and stuff. We, yeah, used to tease each other, tease each other, you know, watch the same shows and movies and stuff but I think because we had such a, a physical proximity and, er, my age, er, I think teen years, I think puberty hitting and stuff, I think it’s just animalistic of me, you know, just letting my emotions take over and stuff and I couldn’t see, I was sort of blind, I couldn’t see the relationship that we had. I just saw that as a body next to me, you know, and I think that’s why that happened.”

29. When asked about this at court, T denied that he had sucked R’s ear. He accepted that he had kissed her on the lips. He said that when, in his police interview, he had accepted that what R had alleged had happened, he was simply accepting that an incident of the kind she had alleged had occurred, not the details of what was being put to him. However, later in the interview he said, “The ear thing happened....” [G235, line 20]. He denied that his “animalistic” impulse had been sexual, it was just an unthinking spur of the moment movement which he had immediately regretted.
30. In his witness statement and oral evidence T admitted only that on one occasion, in Pakistan, in the early hours of the morning, he had kissed R on the lips when they had been sharing a bed, in their Uncle’s room. He denied all other allegations. He said that the events alleged did not happen. Indeed he did not recognise the “fashion games” R had referred to, and he denied ever having shared a shower or bath with his sister. In his police interview, by contrast, he had said,

Right. I’m not saying she’s not, she’s lying or anything, I’m just saying I can’t remember the things that happened and I can also remember the things that did not happen and they would never happen, you know, those things that she’s talking about me filming her, I would never film her, never did.

[G235 line 15]

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31. T denied that there was any row in front of his mother or otherwise in which R confronted him about what he had done. The first he knew about any such allegations was on 7 June 2021 when the police asked to interview him. However, T did say that “obviously” his parents would have kept it within the family had R made the allegations to them [G235, line 29].

The Mother

32. The mother gave oral evidence through an interpreter. She was unable to confirm her witness statement which had been prepared in English and signed by her. A translator had appended a signed statement saying that they had translated the statement to the mother, reading it out, and that she had confirmed the statement. The means of adducing a statement from a witness who does not read or write English was set out by Peter Jackson J in *NN v ZZ and ors* [2013] EWHC 2261, in which he said that a statement by a non-English-speaking witness must be prepared in the witness' own language before being translated into English. This, he said was implicit in FPR PD22A, para 8.2, which provides that

Where the affidavit/statement is in a foreign language –

(a) the party wishing to rely on it must –

(i) have it translated; and

(ii) must file the foreign language affidavit/statement with the court; and

(b) the translator must sign the translation to certify that it is accurate.

In the present case the mother could not recall the statement being read out to her in Urdu and so could not formally confirm her statement. This led to the need for extended examination in chief and the costs of preparing the statement were wasted.

33. The mother was steadfast in her denial that R had ever spoken to her about her allegations against T. No such conversation had ever taken place and she had not witnessed any row during which R had confronted T with the allegations. The first she knew of the allegations was on 7 June 2021 when told of them by the police. She said that had she been aware of the allegations earlier she would have talked to R and T and then gone to the police herself. The allegations would have brought dishonour on the family but she would not have kept them within the family. She was asked whether she believed the allegations and said that she could not accept what she had not seen. Whilst she also said that one or other of her children must be lying she was happy for it to be recorded that her view was that if she had not seen it she could not believe it. The mother told me that she had a very close relationship with R, that she had not noticed any change in R's mood in the months leading up to 7 June 2021 (when R herself told the police she was feeling suicidal at times) and that she thought that R seemed happy within the family and at home. She said that R had never joked about T going to jail

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and she could not recall any occasion when the father had talked about those who dishonoured their families ending up at the bottom of a lake.

34. The mother became tearful when contemplating the break-up of her family and the absence of her daughter. I asked her why she thought that the daughter she knew so well should do what she did, given the enormous consequences for R, T and the whole family. She could not offer any explanation. She said it was a surprise to her. When the police asked her a similar question she had said that perhaps R was suffering a mental illness.
35. The mother and father have engaged with Social Services and have followed advice. They have co-operated with the police.

The Father

36. The father also required an interpreter when giving oral evidence. He affirmed that he had had no knowledge of any allegations by R prior to her making them to her school and the police on 7 June 2021. He denied that he had witnessed or had been told about a row between R and T in which R accused T of stealing her innocence. The father portrayed the family as “normal” with good relations between parents and children and between R and T. He denied R’s characterisation of him as conservative, traditional, and sometimes aggressive. He denied that he had ever called R a slut, as she alleged to the police, or that he had fought with her about whether she could wear a skirt as part of her school uniform, which was something she told the police about during her interview. He denied having taken a view as to whether R or T was telling the truth about the allegations (other than the limited admission by T) and told the court that had R spoken to him about the allegations he would have talked to R and T and then reported the matters to social services and the police. He denied that he would have kept the allegations within the family. He said that it is certain that if the mother had learned of the allegations she would have informed him. He said that he stood by R and missed her. He said that the police and social services had advised the parents that T should leave the family house so that S could return and that they had gone along with that decision.

Events Subsequent to R making her Allegations

37. Two very unfortunate events have affected R since she made her allegations. She has remained separated from her parents which has been her wish but on 30 September 2021 during a visit to her foster home, R made an allegation to MB, supervising Social Worker, of sexual behaviour towards her from another fostered young person living in the home (AN) who had asked R to have sex with him. The allegation was investigated. A second female employed as a personal assistant for the foster carers’ daughter later reported that she had been the victim of a sexual assault by AN. The investigations showed that R’s concerns were well founded.
38. In October 2021 R was seen by Ms A, who had been engaged by Cafcass and had been appointed as R’s Children’s Guardian. Ms A had met R previously but on this occasion

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she talked with R about the proposed finding of fact hearing and about issues concerning R's feelings about her experiences and about sex in general. Ms A spoke to R about her own adolescence and her own relationships. R came away from the meeting confused about Ms A's role and why the discussion had taken place. When she spoke to her foster carer's social worker there was concern about Ms A's conduct which led to a formal complaint. On 12 January 2022, RJ, Service Manager with Cafcass, responded formally to R's complaint upholding the substantive complaints that Ms A had shared personal information with R and raised inappropriate matters in her discussion with R. Ms A was removed from her role in this case and a new Children's Guardian appointed.

39. R has had telephone contact with her parents on about three occasions only. They have not met face to face since 7 June 2021. R has not wished to see them let alone to return home.

Submissions

40. I need not repeat the detailed and helpful submissions made in relation to the evidence but the final positions of the parties should be recorded. The Local Authority invites the court to make the findings sought in its Amended Schedule of Allegations. The Children's Guardian did not adopt any position in relation to the allegations before the hearing but by the close of the evidence, for the reasons ably articulated by Mr Hargan, the Children's Guardian had firmly adopted the Local Authority's position. R, who was separately represented, had not wished the finding of fact hearing to take place but maintained that her allegations were true. T submitted that whilst he accepted an element of truth in one of the allegations - the allegation that he kissed R on the neck and lips - the remainder of the allegations were fabricated. His position was not that R had been mistaken, or had retrospectively misinterpreted innocent childhood behaviour, but that she had made up the allegations.
41. The mother submitted that she and the father were placed in an invidious position when one child made allegations to the police about another child, but that they had engaged with the authorities and the court should accept that if, which the mother denies, R had made the allegations to her, she would have talked to the father and they would have alerted the authorities themselves. It was suggested on her behalf that R had given inconsistent evidence about her mother's reaction to being told by R of the allegations in 2020 - on one account her mother was sympathetically hugging R, on another she was calling her "crazy" and saying that she would destroy the family.
42. Ms Sanders, for the father, said that he was neutral in relation to whether R's allegations were true - he left that decision to the court - but he was adamant that no-one had told him about the allegations before R spoke to her school and the police on 7 June 2021. Had R made the allegations to the mother as she claimed, then the mother would certainly have told the father and he would have addressed them directly with R and T. There would have been ructions within the family but, as it was, there was calm because R did not make the allegations to family members.

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43. The burden of proof lies on the Local Authority in relation to all the alleged facts that the court is invited to find. T and the parents do not have to prove anything. However, I have to evaluate all the evidence including that given by T and the parents before making my findings. I have to consider the evidence in relation to each allegation – it would be open to me to find all, none or only some of the allegations to be proved.
44. I found R’s evidence, as given in her ABE police interview, and as relayed through the evidence of Ms K and CY, to be impressive. In particular,
- i) R had thought about what she was to say to her school safeguarding lead and to the police. She was aware that making her allegations would have significant consequences. She took the matters very seriously. She spoke about the allegations and her family with sensitivity and maturity.
 - ii) R’s accounts have been very largely consistent. I have referred to an inconsistency in the recorded accounts of the shower/bath incident, and an inconsistency as to whether she told her father of T spying on her in 2015. Otherwise, she has given consistent accounts of the reported incidents and of the family’s response. I do not detect any inconsistency in her description of informing her mother of “everything” in 2020, of her father knowing about what she had made allegations against her brother without R having told him directly, and about her parents’ reactions. It is true that at [G182] when asked if her father knew what was happening, she began her answer “No. I think my mum probably told him...” However, I would caution against over-scrutinising R’s free flowing responses in interview – she clearly meant to say, and did say, that she had not told her father about the allegations, but that he must have known about them because of the way he subsequently spoke to her. Generally, there is an absence of significant inconsistency in R’s evidence.
 - iii) R’s evidence is measured and limited. There is no evidence of exaggeration, but rather of being careful not to overstate her case. For example, she was anxious to stress that there was no penile penetration during the bath/shower incident.
 - iv) R provided spontaneous answers, giving requested information and detail about the alleged events when asked by the police to do so.
 - v) R’s emotions and mood were consistent with what she was alleging and discussing.
 - vi) R’s allegations were consistent with the family’s circumstances. For example, she does not allege that any of the abuse took place in the bedroom of the family home in Country A. The mother told me that the whole family slept in one room in a small flat. The mother accepted that she would very occasionally go out and leave R and T alone in the flat: that would be the opportunity for T to abuse R as she alleges in the bath/shower. Again, when the family were in Pakistan, different opportunities arose for T to spy on or touch R inappropriately. The history of the allegations fits in with the circumstances that prevailed at the relevant times.

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- vii) R's characterisation of her mother's response to being informed of the allegations in 2020 fits with my perception of the mother, having seen her give evidence. She accepts that she is an uneducated woman. She appeared to me to adopt a simple view of her role in the family and of her children. It is entirely credible that she should both be upset that her daughter was upset on informing her what had occurred, but also upset with her for causing a row with T, and concerned that the allegations would be made to the authorities or would go public. Likewise, it is credible that rather than confronting R directly, the father would try to bury the allegations by thinly veiled threats to R that it would be in her interests to keep her allegations to herself.
 - viii) R has no history of living in a fantasy world, of causing mischief by making up allegations, of any form of dishonesty, or of being unreliable. To the contrary, she appears to have been a "good" daughter and sister. It would be wholly out of character for her to concoct a series of serious allegations of sexual abuse, add to them fabrications about informing her parents and their responses, and to go to the school and then the police, knowing of the serious potential consequences of doing so. I note that R has raised other complaints about her former Guardian and a young person in her placement that have been found to be valid. Again, this is evidence that she is not prone to making false allegations for ulterior motives or otherwise.
45. T's responses to R's allegations in his own police interview are revealing. I do take into account that he had no time to prepare for the interview and was a young man alone, without a solicitor (as was his choice). Nevertheless, T struck me as being an intelligent man who understands the importance of the words he uses. He flatly denied certain allegations, such as taking photographs or film of R, but said that he could "not remember" others. It is plain from the whole of the interview that he drew a distinction between allegations he denied, and those he did not deny but could not remember. Even though he was young at the time of the alleged events, it is noteworthy that he could not say to the police that he had never done what was alleged. Also, in relation to the kissing allegation, T admitted it and said that he had been "animalistic" when he had kissed R. It is evident that T was unable to resist an impulse to act in a sexual way towards his sister. As Mr Hargan put it in submissions, T crossed the line of acceptable conduct by one sibling to another. Whilst admitting his actions, T was unwilling to admit that he had felt a sexual impulse. He was uncomfortable confronting what had caused him to act as he admitted he had acted. It does not follow that because T was caused on impulse to act in that way on one occasion that he did so on other occasions. On the other hand, it is more credible that he did so than if there was no evidence that he had ever "crossed the line".
46. On T's account, he had a good relationship with his sister for many years but she has chosen to make very serious allegations that he has sexually abused her without apparent cause. It has tentatively been suggested that R wanted freedom and a more Western lifestyle, but (i) her parents say that she could wear what she wanted and have friendships with whomever she wanted whilst at home with them; (ii) if she were to fabricate allegations to secure her "freedom" she could have made up allegations of ongoing abuse, or of more serious abuse, but she was very clear that the abuse had stopped and as to its limits. Even knowing the price she is paying for having made the

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allegations - complete separation from her family – R has maintained her allegations. I find it implausible that she has deliberately and maliciously caused damage to herself and to her family simply in order to leave the family unit.

47. T and his parents cast doubt on his having access to a computer to show pornography to R when the family lived in Country A, but they accepted that there was a family computer in the flat. It is feasible that T used the internet on that computer to show R some images which she has described.
48. On the parents' accounts R has made up a number of details about her dealings with them. She has made up the whole account of informing her mother of the allegations in 2020, of her father "fighting" with her about her wearing a skirt as part of her school uniform, of him calling her a "slut" on one occasion because of what she had been wearing when out of the house with a friend, of the father talking about what would happen to her if she brought shame on the family or if she were to be put into foster care. If the parents are to be believed, then R has fabricated a mountain of detail about her interactions with them in order to mislead the authorities. It was suggested on behalf of the mother that R had to lie about telling her mother about the allegations because if she had not blamed her parents for failing to protect her, the consequences of making the allegations against her brother would have been his exclusion rather than her freedom. That suggestion did not come from the mother herself and it seems to me to be fanciful, projecting onto R a level of manipulative scheming of which I do not accept she is capable.
49. Having considered all the evidence I am sure that R told the police the truth about the allegations against T that are set out at paragraphs 2(i) to (viii) of the Amended Schedule of Allegations. I have referred earlier to some inconsistencies in R's accounts but having regard to all the evidence and the matters set out above, I am satisfied that the Local Authority has proved that each of the allegations at 2(i) to (viii). The inconsistencies do not undermine the credibility of the evidence in support of any of the individual allegations.
50. There has been no submission to me that if the said allegations are found proved, R has not suffered sexual, emotional and mental harm including that she has had thoughts of harming herself, as a result of the sexual abuse I have found took place. Having regard to all the evidence I find that the allegations at 2(ix) and (x) are proved.
51. I am also satisfied that R did inform her mother of the alleged abuse in 2020 and that her mother called her "crazy". However, what R then told the police is that the mother said that R would destroy the family, not that she would bring dishonour on the family. It is right to say that R told the police about the importance of honour when describing her mother's reaction, but I can only safely conclude that the mother said that R was crazy and would destroy the family. Further, the mother said those things, I find, only after R had confronted T (after she had informed her mother of the abuse). I note that the mother said in evidence at court that she thought that R was mentally unwell and that she uses the word "crazy". In any event, for the reasons already given I find R's evidence more credible than the mother's in relation to this allegation. In acting as she did, and failing to take any steps to support R beyond an initial hug, the mother failed to support R. I find allegation 3 proved.

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52. I find that the mother did tell the father of the allegations of abuse that R had raised with her and that the father and R knew to what he was referring when he talked of bodies ending up at the bottom of lakes, and about dishonour. I accept, as did R in her police interview, that the father did not intend to kill or cause serious harm to R, but he nevertheless wanted to keep her quiet and so made these threats for that purpose. I reject the evidence of the father and the mother that they would have gone to the authorities had R raised these allegations with them. Firstly, now that R has made the allegations, they have both taken a similar position: if they did not see the abuse they cannot accept that it happened. The father says that he leaves the decision as to whether the abuse happened to the court. He has not listened to his son's police interview. There is no evidence that he or the mother have anxiously enquired as to the allegations and their son's account. Rather they have been passive in dealing with both T and R in the aftermath of her allegations being made to the authorities. That is consistent with a passive approach before 7 June 2021 when they just wanted the issue to go away and for R to keep it to herself. Ironically, the pressure caused to R by her parents' attitude is one of the reasons she decided to speak out. R became suicidal at times between revealing her allegations to her mother and 7 June 2021. I am satisfied that allegations 4 and 5 are proved.
53. There has been a danger of losing sight of S in all the disputes about the sexual abuse and its aftermath. One of R's motivations for speaking out was concern that T was bathing him, that S was vulnerable and could not complain for himself if anything happened to him, and R's experiences of abuse by T when he was younger. She was anxious that perhaps T's abuse of her had stopped when she became older and that T had a predilection for younger children. That was speculation on her part and there is no evidence that T has ever done anything inappropriate to or with S. However, there is evidence that he was close to S, spent a good deal of time with him and, sometimes, bathed him. The mother accepted that he did. Given the nature of the abuse revealed by R, perpetrated on her by T when she was at about S's age, the parents should have been expected to respond to her allegations, which I have found she made to the mother and the father was made aware of, by taking steps to protect S. They could have spoken to T about what had happened but there is no evidence that they did. They could have asked him to stop bathing S, but there is no evidence that they did. They could have monitored T with S to satisfy themselves that there was no risk, but there is no evidence that they did. I am satisfied that allegation 6 is proved.
54. I received no submissions that if paragraphs 2 to 6 inclusive of the Schedule of Findings were proved, that findings on threshold would not follow. It follows from the finding at paragraphs 4 and 5 that the threshold is thereby met in respect of R. As for S, the findings I have made satisfy me that he was at risk of suffering significant harm, namely sexual abuse, attributable to the care likely to be given to him not being what it would be reasonable to expect a parent to give to him. That is not a finding that S has suffered harm of that nature, only that there was, at the relevant time, a risk of it. The risk did arise because of the matters set out in the preceding paragraph of this judgment.
55. Accordingly, the Local Authority's Amended Schedule of Findings Sought is proved in its entirety with the sole caveat that the mother calling R crazy and that she would destroy the family (rather than that she had brought dishonour on the family) happened after R had confronted T about his abuse of her. My findings are at Appendix Three to this judgment.

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56. There was some focus on the fact that the family is Muslim. The parents were questioned about the importance of the concepts of honour and shame for them given their cultural heritage and religious faith. I emphasise that my findings of fact are based on the evidence specific to this case and not on any pre-conceptions or expectations of the behaviour of members of the family on the basis of their cultural heritage or religion. Sexual abuse is known to occur in all manner of different families, regardless of class, culture or religion. This family's response to it happening in its midst is specific to the family, not to any wider community.
57. T denied all but one of the allegations against him. I have not accepted his denials and I am sure that he knew his denials to be untrue. The knowledge of what he did to his sister when they were both children is very uncomfortable for him now he is an adult. I believe that he has not been prepared to admit to his family and the court the truth of what happened because of the embarrassment and shame that it will bring him and the adverse effect on his relationships within the family. The parents have both covered up their knowledge of the allegations made by R within the family in order, misguidedly, to try to protect the family from scrutiny and from loss of reputation.
58. The parties will need time to reflect on the findings I have made. S is living with his parents. I have no doubt that he is loved and cared for by them. Risks to S have to be assessed before any final welfare decisions are taken and directions for the future conduct of the case will be given accordingly.

Appendix One**Schedule of Findings Sought**

At the time protective measures were taken, namely on 7th June 2021, the children R and S were suffering and were at risk of suffering significant harm. The harm and risk of harm was attributable to the care that they were receiving and likely to receive from their parents, such care not being what it would be reasonable to expect a parent to give to them.

Specifically, R has suffered significant sexual, physical and emotional harm and S was at risk of sexual harm with the consequence that their social, emotional, behavioural and physical development has been impaired.

PARTICULARS IN SUPPORT

1. R was subjected to sexually inappropriate activity initiated by her older brother, T, who was also a minor at the time.
2. The following inappropriate sexual activity took place:
 - i. When R was 9 years old, 12-year-old T shared a meme or images from his computer of sexual activity between adults to R.
 - ii. On or about Summer 2013, the parents had left R and T home alone whilst they went shopping, during this time T suggested to R that they should both have a shower, they removed their clothes and sat in the bath. T was sat behind R and he moved his erect penis under Rs vagina and “butt”.
 - iii. On one occasion T licked and kissed R to the ear and mouth.
 - iv. On one occasion T removed R’s mobile phone from her possession and asked her to talk about “dirty things”, R would talk about masturbation, oral sex and anal sex and her phone was then returned to her.
 - v. T flashed his penis to R on two or three occasions whilst they lived in Country A.
 - vi. When the family travelled to Pakistan when R was 12, T played “fashion games” on one occasion he dressed R by placing a top over her and tucked it into her shalwaar (baggy bottoms) and whilst doing this he slid his hand under her clothes and touched her inappropriately by stroking her vagina and “butt” area.
 - vii. During the visit to Pakistan, T and R shared a bed, when T removed his pyjamas and placed R’s hand on his penis.
 - viii. Whilst in Pakistan T would peer through the blinds (“lines”) of the bathroom door when R was using the bathroom on two occasions which made R feel uncomfortable.
 - ix. As a consequence of i to viii above R has suffered significant harm in the form of sexual and emotional harm due to the inappropriate sexual activity initiated by T.
 - x. As a consequence of the inappropriate sexual activity R’s mental health has suffered and she has ideas of self harm due to the sexual abuse that she has suffered.

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3. On or about 2020 R informed her mother of the sexual abuse, her mother failed to be supportive and called R “crazy” and that she would bring dishonour to the family.
4. The father has made general remarks about R bringing shame on the family and stated that people that are shamed are found dead in lakes.
5. As a consequence of 3 and 4 above the mother and father failed to support R and have been unsupportive thereby impacting on her emotional wellbeing.
6. Once the parents were aware of the sexual abuse they failed to act appropriately and protect S from his older brother, who is a child with a number of additional needs and is a non-vocal child due to his autism and therefore a vulnerable child.

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Appendix Two

Details of Allegations of Sexual Abuse made by S

Confidential

Appendix Three**Schedule of Findings Made**

At the time protective measures were taken, namely on 7th June 2021, the children R and S were suffering and were at risk of suffering significant harm. The harm and risk of harm was attributable to the care that they were receiving and likely to receive from their parents, such care not being what it would be reasonable to expect a parent to give to them.

Specifically, R has suffered significant sexual, physical and emotional harm and S was at risk of sexual harm with the consequence that their social, emotional, behavioural and physical development has been impaired.

PARTICULARS IN SUPPORT

1. R was subjected to sexually inappropriate activity initiated by her older brother, T, who was also a minor at the time.
2. The following inappropriate sexual activity took place:
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 - viii. Whilst in Pakistan T would peer through the blinds (“lines”) of the bathroom door when R was using the bathroom on two occasions which made R feel uncomfortable.
 - ix. As a consequence of i to viii above R has suffered significant harm in the form of sexual and emotional harm due to the inappropriate sexual activity initiated by T.
 - x. As a consequence of the inappropriate sexual activity R’s mental health has suffered and she has ideas of self harm due to the sexual abuse that she has suffered.

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3. On or about 2020 R informed her mother of the sexual abuse, her mother failed to be supportive and, after R had confronted T about the abuse, called R “crazy” and that she would destroy the family.
4. The father has made general remarks about R bringing shame on the family and stated that people that are shamed are found dead in lakes.
5. As a consequence of 3 and 4 above the mother and father failed to support R and have been unsupportive thereby impacting on her emotional wellbeing.
6. Once the parents were aware of the sexual abuse they failed to act appropriately and protect S from his older brother, who is a child with a number of additional needs and is a non-vocal child due to his autism and therefore a vulnerable child.