

IMPORTANT NOTICE

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

Case No: DE19C00024

IN THE FAMILY COURT SITTING AT CHESTERFIELD

Chesterfield Justice Centre  
Tapton Lane  
Chesterfield  
S41 7TW  
Date: 02/03/2020

Before :

HIS HONOUR JUDGE JONATHAN BENNETT

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Between :

DERBY CITY COUNCIL

-and-

Applicant

KP

-and-

First Respondent

--and-

AS

Second Respondent

-and-

TC

Third Respondent

-and-

A

Fourth Respondent

-and-

F, MaC, AND MiC (by their Children's Guardian, Hilary Baumfield)

Fifth to Seventh Respondents

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Ms Giles (instructed by Derby City Council Legal services) for the applicant

Ms Mulrennan for the 1st Respondent

Ms Potter for the 2nd Respondent

Mr Veitch for the 3rd Respondent

Ms Buttler for the 4th Respondent

Ms Bloomfield for the 5th to 7th Respondents

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## **JUDGMENT**

### **1. Introduction**

1.1 This case concerns care proceedings issued in respect of four children by the LA on 25<sup>th</sup> January 2019. The children are:

- A, a girl, aged 16
- F, a girl, aged 14.
- MaC, a boy, who is nearly 10.
- MiC, a girl, aged 4,

The children F, MaC and MiC were represented by Ms Bloomfield who took her instructions from the children's guardian, Hilary Baumfield. The

Guardian, together with Ms Bloomfield saw A in January 2019 and came to the view that she should be separately represented. A was very opposed to the application at that time for an interim care order. Ms Buttler was instructed to represent A, who by then was 15.

1.2 The threshold to be found at A009 in the bundle raises, inter alia, allegations of sexual abuse by TC towards A and F and physical harm towards F. In relation to KP it is said she failed to protect them from sexual abuse perpetrated by TC and caused A and F emotional harm by failing to believe them in their allegations and support them once the allegations were made. It is further said MiC and MaC have been subject to neglectful parenting by TC and KP and that all the children have been exposed to domestic violence and abuse whilst in their care placing them at risk of physical and emotional harm. Furthermore, it is alleged KP has placed the children at risk of physical and emotional harm by virtue of her use of cannabis.

1.3 It became clear a fact-finding hearing would be required and there were issues surrounding whether F and A would be required to give evidence. This caused some delay. Procedures in relation to children giving evidence in the Family court seem to be somewhat lengthy and cumbersome and, whilst well intentioned the delay caused is not necessarily conducive to the paramount welfare of the children at the heart of the family court system. Ultimately, I ruled on this in a Judgment dated 12<sup>th</sup> September 2019 and did not require A to give evidence. F, unlike her older sister was willing to give evidence and I outlined measures, following guidance from the intermediary, JW, to enable F to give evidence. This took place on the 7<sup>th</sup> February 2020 during the final hearing by means of a further ABE interview. Mr Veitch drafted questions, these were amended by the intermediary and ultimately, subject to a few alterations, approved by myself. Ms Bloomfield put the questions to F, who was assisted by the intermediary.

1.4 The final hearing commenced on Monday 3<sup>rd</sup> February. The LA were represented by Ms Giles. They sought findings in relation to the composite fact finding schedule at A094 – A102 dated the 18<sup>th</sup> November 2019. This comprised six sections

- Sexual harm with allegations of abuse by TC towards both F and A,
- Physical harm towards F by TC in the form of a black eye.

- KP failed to protect F and A from sexual harm occasioned by TC, by failing to believe them and offer support.
- Neglect occasioned by both TC and KP.
- Domestic violence and exposing the children to the same.
- Drug misuse on the part of KP.

1.5 KP changed her position during the final hearing and provided a further statement on 5<sup>th</sup> February. By December 2019 her position had been that she accepted her relationship with TC was an abusive one. At the time she had viewed him as a good father figure to the children. She had not believed TC could behave in the way alleged. She then accepted he did. She also accepted her words and actions could have been perceived as blaming A. She denied pressurising A into retracting the allegations made against TC. During the hearing she made this further statement, indicating that she had been on a difficult journey to reach the point where she could accept the mistakes she had made. She identified the mental health issues she faced. She accepted she had failed her children so far as the allegations made to her whilst living at S Street. She denied remaining in an intimate relationship with TC following the November 2017 allegations, but she accepted continuing to “*maintain regular contact*” with him. She accepted that both A and F would have felt under pressure to retract their statements. She concluded by stating “*I accept that as a result of my actions I failed to protect A and F from sexual abuse and caused them emotional harm by failing to believe their allegations. I truly regret my actions and only now realise the impact upon my children*”.

1.6 TC challenged the allegations particularly in respect of the sexual allegations made by both A and F, which he categorically denied. He was of the view his brother, SC, had groomed the girls to make these false allegations against him. He accepted domestic violence and neglect.

1.7 At the conclusion of the evidence the parties prepared written submissions. I raised a subsequent issue with them in connection with paragraph 14 of the schedule which related to KP. I invited further submissions. I notified the parties I would send this judgment out in draft on Monday 2<sup>nd</sup> March. I am grateful to the advocates for the detailed and helpful written submissions they made in a case where evidence was heard over seven days.

## 2. The Law

2.1 The burden of proof lies on the party who makes the allegation, in this case the local authority. They have set out the findings they seek in the composite schedule of findings sought.

The standard of proof is the balance of probabilities: see Re B (Care Proceedings: Standard of proof) [2008] UKHL 35. In the words of Baroness Hale at paragraph 70: *“I...would announce loud and clear that that the standard of proof in finding the facts necessary to establish the threshold at s31 (2) or the welfare considerations at s1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegations nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies”*.

This is particularly important in this case. TC has put forward an explanation for these allegations being made by A and F, namely they have been instigated by his brother SC. It is not for TC to prove this. It is for the LA to satisfy me, to the requisite standard of proof, that TC behaved in the way they allege.

2.2 Findings of fact must be based upon evidence not speculation. As Munby LJ (as he then was) observed in Re A (Fact Finding: Disputed findings) [2011] 1 FLR 1817 *“it is an elementary position that findings of fact must be based on evidence, including inferences that can be properly drawn from evidence and not suspicion or speculation”*. The court’s task is to make findings based on an overall assessment of all the available evidence. In the words of Butler-Sloss P in Re T [2004] 2 FLR 838: *“Evidence cannot be evaluated and assessed separately in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof”*.

2.3 One part of the assessment is an analysis of the credibility and reliability of the witnesses and potential perpetrators. It is right that a number of the witnesses have accepted telling lies. A herself said her allegations were untrue and now says the original allegations were

correct. F has made allegations and then said they were untrue. She also has reverted to her original position. KP has changed her position in these proceedings and accepts telling lies. TC has to a limited extent accepted telling lies. I need to remind myself of the important warning to be derived from R v Lucas [1981] QB 720 that *“if a court concludes that a witness has lied about a matter, it does not follow that he has lied about everything. A witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure”*.

2.4 When it comes to A and F’s evidence I have to bear in mind that:

- A child’s perception of the passage of time is likely to be very different to that of an adult. A child’s memory can fade, even in a short time, when trying to describe events, even after a fairly short period, and a child’s memory of when and in what order events occurred may not be accurate.
- A child may not be able to explain the context in which events occurred and may have particular difficulty when answering questions about how he/she felt at the time or why he/she did not take a particular course of action
- A child may not fully understand the significance of some things that have happened (which may be sexual) at the time they happened and this may be reflected in the way he/she remembers or describes them

All these things go to a child’s level of understanding rather than to his/her credibility and so I must be cautious about judging a child by the same standards as an adult. None of these things necessarily mean that this witness is or is not reliable: that is ultimately a matter for my judgement.

2.5 In the case of the sexual allegations made by A and F they were at the time, and indeed still are, children. There is no rule of law that their evidence must be corroborated. The fact that a witness is young does not mean that his/her word is any more or less reliable than that of an adult and I should assess A and F’s evidence in the same way as I assess any other evidence in the case. I must however take note that their evidence has not been tested in the same way that some other evidence has. A has not been cross examined at all. F has been cross examined but TC has not had the same opportunity to do so that he has had with other witnesses. If I come to the conclusion that TC has been disadvantaged in any way

because of that then I must take that into account in his favour. I should also take account that a child's perception of the passage of time is likely to be very different to that of an adult. A child's memory can fade, even in a short time, when trying to describe events, even after a fairly short period, and a child's memory of when and in what order events occurred may not be accurate.

2.6 Both F and A make allegations of a sexual nature against TC. There are similarities between the accounts in terms of their ages at the time, his modus operandi and his comments to each of them. The question is to what extent can these allegations be cross admissible and support each other? There are two approaches to this. The first can be termed the coincidence approach. An allegation may appear more compelling when all the evidence, including allegations of other offences, is looked at in the whole. However, I would have to rule out collusion as an explanation for the similarity and this is precisely the point taken by TC. Only if that is ruled out could I consider the force of the argument that they are unlikely to be the product of coincidence. The second is the propensity approach. If I am satisfied TC has committed one allegation, then that may demonstrate a propensity for such sexual offending, and this may be relevant when considering other allegations. However, I could not find TC committed an allegation simply because I was satisfied, he had committed another one. It seemed to me of the two approaches the propensity approach was more suited to this case. Collusion was clearly a live issue. It is the heart of TC's case. Even if deliberate, planned collusion were to be ruled out there remained the possibility of unintentional influence by one girl upon the other. In addition I came to the view that the allegations made by F were stronger as first there was evidence, corroborated by others including TC, that she had made allegations long before SC had got to know the family. Admittedly she withdrew the complaint. Later she made the more detailed allegations and has been interviewed again and maintained the accuracy of her original allegations. If I was satisfied to the requisite standard of proof in relation to some or all of those I could use that as some support for the allegations made by A. I could only do that if I was satisfied he did have such a propensity to commit such offences. I could not conclude he had committed the allegations against A simply because I had been satisfied he had abused F. The allegations made by both girls must be considered separately.

2.7 A and F gave evidence that they told a limited number of others, including L and her mother, SW of these events. There were also accounts given to SC and a relative, WG. I can take account of this when I am deciding whether A and F's allegations are true, but I must be aware that this is not independent evidence about what happened between A and F and TC. This is because it is only evidence about what A and F told these others about what they said happened. These others were not there and so did not see what did or did not happen. The reason I have heard about what they said to them is so that I can consider it when I am deciding whether or not A and F have been consistent in what they have alleged, and whether or not they have told the truth. I remind myself that this is not extra or independent evidence of what did or did not happen between A, F and TC.

2.8 As I reviewed the evidence and read the written submissions I identified there was evidence that potentially went further than the findings the LA sought in relation to paragraph 14 of the composite schedule that Mother "*.....caused emotional harm by failing to believe .....and support*". A court in such a situation must act with great care. As identified by Wall LJ (as he then was) in Re G and B Fact finding Hearing [2009] EWCA Civ 10, [2009] 1 FLR 1145 a judge contemplating making findings not sought by the LA "*must be astute to ensure; (a) that any additional or different findings made are securely founded in the evidence; and (b) that the fairness of the fact finding process is not compromised.*". I thus invited further written submissions on this aspect..

### 3. The evidence

3.1 I seek to set out here a summary of the relevant evidence. It is not a recital of everything I heard and read.

3.2 F's evidence.

I shall deal first with her evidence which deals both with the allegations of sexual abuse as well as the occasion she alleges TC gave her a black eye. They form paragraphs 8 – 13 of the composite schedule. The prime source of her evidence is the ABE interview of 22nd November 2017. She was interviewed by a single police officer. There was no one else present. The interview lasted for 1 hour 55 minutes. F was just 12 years of age. F outlined sexual abuse had taken place since around 2015 and



took place at the family homes on M Street, S Street and S Road. In around 2015, at M Street, when other family members were asleep upstairs and F was sleeping on the settee in the living room, TC came downstairs and sexually touched her on the vagina and placed her hand on his groin, on top of his trousers. In a childlike way she indicated he had digitally penetrated her, which had really hurt. Afterwards he told her not to say anything. F estimated that she was aged nine. KP was at the time taking sleeping medication. The next day, when KP went out to the shops, TC forced F to give him oral sex. After some hesitation and silence F gave a detailed and accurate description of the mechanism of oral sex [G150-151], including that TC ejaculated. At S Street, in approximately 2016, KP was in town with MiC and TC sent A and their older brother, B to the park and he took F's trousers down and rubbed his penis on her vagina. F was approximately 11 years. The most recent incident had been at S Road, on a Saturday prior to her birthday (on [a date in] 2017) when KP was out of the house, having gone to the shops. TC performed oral sex upon her on the bed in his bedroom. He always told her not to tell anyone and promised her rewards, such as money or being able to stay at a friend's. He never gave her any money, apart from £10 on one occasion. She was frightened of him. She thought if she told anyone he might have hurt her, as he was aggressive. She commented that if they did something to make him mad, he could get very angry. She had been hit by TC causing a black eye on one occasion. She disclosed what was happening to KP whilst they were living at S Street (they moved there in 2016). She had written KP a note. She had told A initially, but she did not believe her. However, when she told KP what had happened it was mainly A doing the talking, as F was getting too upset. KP did not believe her and called TC upstairs who said he was "flabbergasted" by the allegation. Later F said she and A were taking the door handle from their bedroom door so TC could not gain access to their bedroom when KP was out of the house. She made no reference to any incidents in the time period when KP was staying at the hospital in Leicester for a few nights when B underwent heart surgery in August 2017.

She talked about TC's brother, SC, in the interview although she said she did not like mentioning his name. She had told him the previous day, but he did not know what to do or say. She also heard from A, a few days earlier, that TC had raped her. The previous day she and A left the house and went to A's friend, L, and they both told her what had happened.

On the 7<sup>th</sup> February 2020 F was interviewed again in an ABE. She repeated her allegations. In relation to SC she said *"I wanted TC out of house and I don't think SC liked him ... something to do with childhood SC say if don't like him that much why not ring police and saying he's hitting you and telling you off, stuff like that"*. However, when asked if SC had ever told her to make up the allegations she made she said no.

### 3.3 A's account.

Her allegations form paragraphs 1-7 of the composite schedule. As with F the prime source of her evidence comes from her two ABE's. The first took place on 22<sup>nd</sup> November 2017. She was aged 13. There was a social worker present. The interview lasted 1 hour and 54 minutes. In her case she described sexual abuse perpetrated by TC that had commenced more recently. The first time had been a few weeks earlier when B was in hospital and KP was with him. She described during this period being abused by way of digital penetration and sexual touching of her vagina in TC's bedroom. After the summer holidays she accompanied TC to his work as a painter and decorator and he had penetrative sex with her in a flat on S Street. She made no mention of alcohol being supplied to her in this incident. He also told her on that occasion if she performed oral sex upon him, he would pay her £10. He would also touch her inappropriately on her bottom. He encouraged her to engage in sexual activity with him by passing her notes written on Ladbroke's betting slips, asking her to expose her genitals to him. She retracted these allegations and was formally interviewed in an ABE on 3<sup>rd</sup> April 2018. Unlike F she did not give evidence in these proceedings, being unwilling to do so and wishing to concentrate on the birth of her baby, which was due in [a month].

### 3.4 F and A's first accounts.

PC Essex went to S Road on the 21<sup>st</sup> November. He was present when PC Hodgson spoke to A. She told them *"I went to work with him and he bought me beer to try and get me drunk and asked to pay me for it and I said no but he did it anyway. He did it to my sister last time"*. She clarified she meant sex. She was very upset and did not wish to live there anymore. She later added he had done it to her several times, the most recent was around a week ago at a flat where her dad went to paint. She indicated that her mum had lied and there were lots of times he had been alone with her and her sister, especially when her mum had been at the hospital with her brother.

SW, is L's mother. She had a conversation with both A and F when they arrived at her home on the evening of 21<sup>st</sup> November. Neither girl appeared to go into any great detail concerning the allegations. They mentioned that the sexual abuse had happened when their mother was not at home. Earlier in the day L had told her something of what A and F had disclosed to her. SW spoke to SC on the telephone that night, who thanked her for helping the girls and stated he did not want his name mentioned.

L was ABE interviewed on the 22<sup>nd</sup> November. She was a close school friend of A. She explained that in the previous days A had dropped hints of things her step dad was doing to her. Then on 21<sup>st</sup> November she had told her that her step dad had "*done it all to her*". L clarified with A that she meant sex. A thought she might be pregnant. That evening A asked L to tell her mother. L said F had not wanted to tell her what had happened to her. Neither SW or L, gave evidence at the hearing.

SC gave evidence. He indicated that on the day TC had been arrested A and F were in his kitchen. A discussion arose concerning self-harm and A disclosed she had been raped by TC. He had previously been told of F's earlier allegation.

WG was close to both girls, but particularly A. She is referred to by everyone as "auntie". She spoke to the girls shortly after TC had been arrested on 21<sup>st</sup> November. A told her TC had sex with her. She asked F if he had done the same to her and she replied no but he had touched her "*in places she didn't like*". It had been going on since they lived at M Street. Both girls were very upset. Later she took them back to her house and in her bedroom asked them if they were telling the truth, to which they replied they were. She said the police were going to be asking them questions, so she wanted to know what had happened. A said it was only the one occasion when TC took her to work with him. She said he started touching her and she said "*no*" to him. He said, "*come on let me do it*". She said he put his thing inside her. She never used any other word. She said it hurt. She had been told by him that she could not tell anyone because no one will believe her, and that she was a slag. WG asked A if it was "*full blown sex*" and she said yes. F said it started with her a long time ago and that he used to touch her when her mum used to babysit their little cousin, T. She said he would touch her in uncomfortable places. She did not like it and told him to stop. When they moved house he carried on. She said he would just use his hands. WG did not say that F

told her of TC getting F to touch his genitals or performing oral sex on her. WG, although it had been intended she gave evidence, did not do so.

### 3.5 The retractions.

The investigation made by the police did not result in a prosecution. The matter did not even get as far as the police seeking advice from the CPS. It is said both A and F retracted the November 2017 allegations. DC B confirmed that the retractions were the most significant reason for the investigation being closed by the police. There were even discussions on the issue of prosecuting A, F and SC based upon A's retraction and subsequent ABE interview in April 2018.

F withdrew or retracted the allegations made in her first ABE. DC B spoke to both A and F. DC B recorded in the occurrence log (at G308) on 19<sup>th</sup> April 2018 that *"I directly asked both A and F in front of their mum if they had made everything up and they said they had. A seemed to have more of a conscience than F, who seemed to find it funny"*. He said F would not provide a further ABE. This conversation, as recorded in the log, took place in the presence of KP.

The retraction evidence in relation to A was more detailed, particularly as in her case there was an ABE interview. DC B met with A at her school on 14<sup>th</sup> February having received information that A's allegation may have been untrue. The previous day he had interviewed TC under caution in order to put the medical evidence to him. Towards the end of that interview it was TC telling the officer that he had heard A had decided *"to tell the truth"*. The officer said TC was telling him things he had not been told. It was evident to him the family were talking to TC. He did not know who the link was, but acknowledged it could have been KP. There had been evidence TC was visiting the house, including an anonymous referral from the NSPCC on 25<sup>th</sup> January 2018. On the 14<sup>th</sup>, the day after the police interview with TC, the officer spoke to KP and got her permission to speak to A. He was of the view A would be unaware of his coming and acknowledged in evidence that A was both a child witness and vulnerable. The interview was conducted in liaison with KP rather than any professionals. He felt he would get more out of A if he spoke to her without warning. No one else was present. It was not recorded. He saw it, as he described, as an *"investigative technique"*. He acknowledged in hindsight that if it was A's perception that this had been arranged through KP it could impact upon what she told the officer. He also acknowledged a consultation with social care might have helped his

understanding. He accepted that the retraction at school was a partial one. His first question was “*were you telling the truth?*”. She replied “*some of it. Not about going all the way*”. A was still maintaining TC had touched her on three occasions including, as she described it, “*he fingered me, basically*”. He accepted he did not ask any questions about this as he felt he had to be careful. Subsequently he conducted an ABE on 3<sup>rd</sup> April, nearly 2 months after the conversation at school. He could not explain the delay. This ABE lasted just 12 minutes. No one else was present, although KP had accompanied A there. By the time of the ABE there was a complete retraction. In evidence he was unable to recall if he spoke to any of the social work team in the interim. He thought he was aware there had been a self-harm incident by A on 10<sup>th</sup> March, and she had been referred to CAMHS due both to self-harm and low mood issues. He acknowledged there was nothing in his log concerning this. He did not think A needed any support in the interview. She had KP, and he thought she had all the support she needed. There were no notes from the interview, and he did not recall planning for it. At the time he accepted he did not see the need for that. He acknowledged the brevity of the interview could give the impression there was no real attempt to go through the allegations. He said he was faced with someone who did not wish to be there. He said A had been confident with him. He did accept that A’s account in the ABE was difficult to follow. He acknowledged it was his words at G183 “*So is the bottom line that you wanted TC out of the way – is that the reason behind all of this?*”.

Both A and F now state their November 2017 allegations are true. A said this to the social worker, EW, in June 2018. She also told PC N in July and September 2018. She reiterated it to DS W and DC S in October 2018. On that occasion it is reported in the case note by CC, “*she’s twice been pressured by KP to drop allegations about TC so she had retracted once but refused to retract the second time*”. She is later recorded as saying on that occasion “*I need to do this for MiC and MaC because they don’t have a voice and I don’t want anything to happen to them*”.

CC was the social worker in a later period, after the retractions. She felt A and F were not emotionally supported. She took the view KP did not believe the allegations but behaved very differently towards A. She did not say she believed F but was willing to forgive her. F told her that when she first told KP she had been called a “*tart*”. In the summer of 2018 F told CC that the allegations were true. She repeated the allegations in that

conversation and said she had retracted them under pressure from KP. She didn't want KP to think badly of her.

### 3.6 The environment in which A and F lived post November 2017

There was much evidence about their environment in this period. On 22<sup>nd</sup> November KP had made a statement to the police. She wrote "*I have had no concerns or niggling doubts about TC whatsoever*". Later she said, "*I am so shocked and angry with TC .I am confused because I love him, I can't get my head round it.It's not that I don't believe the girls, I am just so shocked*". On 27<sup>th</sup> November KP told DC B that the girls were refusing to do a medical and A would not hand over her mobile phone. This was incorrect. When he spoke to both girls A simply said she didn't want to do a medical straightaway. F said she would do one. A handed over her mobile phone. The chronology shows on 23<sup>rd</sup> November F and A were supported to return home, after it was deemed their friend's parent was not suitable to care for them in the long term. On 8<sup>th</sup> December it was recommended the children were made subject to a child protection plan. By 12<sup>th</sup> December SW was reporting A had come back to her house. In July 2018 F moved to live with her father, AS. A preferred to stay with WS.

BS was the social worker in the early stages, for approximately eight weeks. When visiting the house in that period F did not interact. She said KP was upset as TC was no longer in the house and she blamed A for that.

EF was allocated as social worker at the end of April 2018 for a short period, working with CC. She had a conversation with both A and F on 20<sup>th</sup> June when they told her they were pressured by KP to retract their statements and say they were lying. They both wanted to speak to the police again. They also said KP had been taking them to TC's flat regularly. They described the flat and EW noted on her visit to it on 28<sup>th</sup> June it was as A and F had described to her.

BS was clear that KP had told her that A had made the whole thing up. She told her this on several visits. She specifically advised KP against coercing A. She was very worried that a young person constantly hearing this said could put them in a state of confusion. She confirmed that A did not tell her that the allegations were untrue, and neither would she advise KP not to tell the police.

CC, one of the social workers who was involved in the case between July and October 2018, said that F had made some serious allegations concerning her mother to KB, the partner of her father, AS. These are set out at C192 . These allegations are not repeated elsewhere. They were not mentioned in the ABE. They do not form part of the LA's composite schedule of findings.

### 3.7 Medical evidence.

Dr H examined A on 29<sup>th</sup> January 2018. Her conclusions were that there was a deep notch in the posterior hymen of A at the 8 o'clock position. She observed this was consistent with the allegation of penetration of the hymen. This could be digital and/or penile. It was not possible to date this. DC B accepted in evidence this was a "significant finding". After the medical DC B and BS spoke to A. She was asked if sexual activity had taken place with anyone else. She said no. BS also recalled that she did not remain in the room for the medical but KP, as her mother, did. The outcome of the medical was explained to K. She recalled how, after the medical she detected no emotional warmth between A and KP.

### 3.8 KP's case

Her revised position was set out in her statement of 5<sup>th</sup> February 2020. She said in evidence that she knew nothing of the sexual abuse when it was taking place. KP denied TC hit the children, although he could get frustrated and hit himself. She accepted she found it difficult to cope after TC left the property. They had been together some 11 years. She was now able to recognise it was an abusive relationship. She acknowledged the S Road disclosure by F. She now accepted she should never have involved TC in that conversation. She said she did not believe the girls until she saw the ABE's. She denied saying anything to the girls directly about not believing them. She further denied insinuating the children were not telling the truth. However, she conceded, as she set out in her revised statement, that her actions may have led the girls to think she did not believe them. She felt it unfair to suggest she was very loyal to TC. The impact upon MaC and MiC had been enormous. TC was their "*knight in shining armour*". That is why she took the children to see him.

### 3.9 TC's case

In reviewing TC's evidence I can be brief. This is because his case is both simple and straightforward. He denied the allegations of sexual abuse made by A and F. It was all lies. It was made up by them in conjunction with SC, who had put them up to this. He said KP was violent. She could be like a "screaming banshee". He had to defend himself. He had the scars to prove it. He accepted he would get angry. F had made up her accounts, including the incidents when she was aged 9, to make it more believable. Her allegations were, to use his phrase, "complete bullshit". He did take A to work. The toilet downstairs was inaccessible, so he went up to a flat which was about to be rented out. He used the toilet to defecate. A was a sophisticated liar and had made these things up with the help of SC. He acknowledged later there was an apology from A. He was refusing contact with A but, if they were getting back together, then "*fair enough*". A wrapped her arms around him and said, "*I'm so sorry*". In relation to his police interview he had lied when he said he was not having contact with MiC and MaC. His reason for lying was to protect KP. He accepted that when asked if the girls had made allegations previously, he had said "no". The S Road allegation must "*have slipped his mind*". However, he did concede he was flabbergasted at the time and was apprehensive it might happen again. He also said he could not remember at the time of the police interview about F's black eye. He did later recall she had a mark under her eye, not what he would describe as a black eye. He did not cause it.

### 3.10 SC

He was TC's brother. He gave evidence. He is on a life licence and spent some 22 years in prison. He denied he held any grudge from childhood towards TC. He secured TC some employment. TC was bailed to his address after he had been arrested in November 2017. SC was on licence conditions that prevented him from seeing children unsupervised. A and F made some allegations to him on the day TC was arrested. He accepted giving the girls cigarettes and purchasing a contract phone for A. Their brother, B, also had keys to his flat. He acquired a phone for him, but not on contract. He had told the girls that if TC was hitting them or sexually assaulting them, they should go to the police. He said he had contacted social services anonymously with his concerns which related to cannabis use and mistreating of the children. Much later he saw A again when he bumped into her at the R Gardens, before October 2018. She repeated



her allegation TC had raped her. His relationship with TC is now non-existent. He is “nothing to him”. He does resent TC due to his falsely accusing him of grooming A and F.

### 3.11 JC

She stayed with KP at S Road after TC had moved out. She was suffering from mental health problems at the time. She was a vulnerable witness. She identified how there were issues of neglect in the home. KP and TC were still seeing each other. She witnessed TC’s terrible temper, although she did not recall seeing him be violent towards anyone. She was present when A apologised to TC. A had been upset that they could not all be together. KP made her feel bad for what she had done to the family. She asked A to apologise, which she did. JC became very distressed whilst giving evidence.

## 4. Analysis of the evidence

4.1 F was only 12 when she first made full disclosure of TC’s behaviour towards her. It was a very long ABE and F had no support. She maintained her allegations throughout. For her to maintain this account, if it were a complete fabrication, over such a period seemed unlikely. She did not seek to exaggerate. For example, on the 21<sup>st</sup> November she was asked by WG if TC had had sex with her, as her sister was alleging happened to her. She said no.

Whilst it is correct there was at times a paucity of detail against that I have to balance F’s age. An illustration of this is at G145 where in her ABE she seemed unable to describe oral sex. Later she is still struggling to explain at G150 what happened to TC’s penis but then she said, “*There was this white thing that came out, I don’t know what it’s called*”. This was a 12-year-old girl having to explain sexual abuse. She also gave a very childlike explanation of digital penetration. In addition, her explanation of TC masturbating himself on her (G164) was credible.

On occasions her time estimates seemed unrealistic. I have to recognise her age and my self-directions referred to earlier as to child witnesses.

F's account was repeated to CC in the summer of 2018 and confirmed when interviewed again, in a formal setting, for these proceedings on 7<sup>th</sup> February 2020. If there had been a motive to get TC out of the house because she disliked him, as KP had maintained, then that no longer applied. He left the house after his arrest. . Towards the autumn of 2018 the relationship itself was also over. Furthermore, in relation to SC there was no need to protect him as by then that relationship seems to have come to an end.

It was also of note that F had made an earlier allegation of such conduct towards her by TC when they lived at S Street. It is accepted by A, F , KP and TC that this conversation re TC's conduct did take place. She accepts she withdrew this. KP now appreciates she handled it badly by calling TC into the conversation and forcing F to tell TC what she had told her. However, the existence of this earlier complaint does show consistency on the part of KP. More particularly, as TC accepted when giving evidence, SC could have played no part in that complaint. He was not involved with the family at that time. That is of some significance when TC's case is considered.

There was delay in relation to F's reporting. First, when she reported matters at S Street and then these events. If these things had really happened would F not have told someone in authority, whether a parent, relative, teacher much earlier? Delay in such cases, or not telling family members earlier, is a regular experience of the courts in such matters. Particularly so as it is F's position when she told her mother earlier at S Street she was not believed, combined with what she says TC told her about not telling anyone. Not everyone who experiences sexual abuse tells someone straightaway. Some people wait months or years. Others never disclose it at all for a variety of reasons. A delay in, or lack of, reporting does not imply someone is lying in the same way as an immediate complaint being made does not connote truthfulness.

However, the ABE allegations were a leap from those WG said were made to her the previous evening. WG did not state that F told her of TC getting her to touch his genitals or performing oral sex on her. I note that F was always the quieter of the two girls when giving accounts to others at this time. This conversation with WG was the same day the police had come to the house and arrested TC. She still told WG of other abuse and of the length of time it had been going on. Furthermore, there was no

opportunity for anyone to ask WG questions concerning her recollection of F's account as she did not give evidence. In the circumstances such an omission, if there was one, did not lead me to the conclusion F was not telling the truth. She was asked later in the evening by WG, as the police were to be speak to her the next day , if she was telling the truth .She told her she was.

The allegations made to KB, whilst not part of the finding of fact are important. If untrue then this would cast doubt upon F's credibility. However, I had no opportunity to test KB's account. Indeed, there was no evidence from her on this issue. She did not give evidence or make a statement. The evidence was hearsay. The allegation was not repeated by F to the social workers. I found nothing else to corroborate them in any way. F was not asked about it and KP denied F would ever had said this. I could not, in the light of the poor evidential status of these allegations, be satisfied the comments were made.

In relation to DC B's evidence I did not read anything into his comment that F, at the point of the retraction, seemed to think the whole thing amusing, unlike A. I reminded myself of F's age and, as DC B accepted in cross examination that there could be a whole variety of reasons for a witness reacting in that way. I noted right at the outset of her first detailed ABE she had said, *"I feel like I've got the giggles"*.

SC's involvement is a subject that cannot be ignored. It is a major issue raised on behalf of TC, who had wished him to be an intervenor in this case. His case is quite simply that SC has encouraged or manipulated F, and A, to make false allegations to him. TC in evidence described SC as *"masterminding"* this. TC alleges SC has a grudge and blames him for his ending up in care. It is correct that SC was keen that his name was kept out of things in remarks to SW. F in her ABE made a similar comment. As recently as the 7<sup>th</sup> February ABE F appears to suggest SC told her to make things up about TC. This appears to be restricted to saying, *"he's hitting you and telling you off, stuff like that"*. However, F denied SC told her to make up the account which she did give to the police. SC would have a reason for his name being kept out of things. By seeing the girls, and also B, in unsupervised settings he was in breach of his licence conditions and this could have led to his being recalled to prison. This is a man who had been released in 2015 after spending 22 years in prison. SC was not even around when F made her first allegations in S Street concerning TC. There was evidence SC was

seeking to help TC, rather than incriminate him due to the long standing grudge he is alleged to have held. He secured him some work with his employer, and he accommodated TC in his hour of need, having been released on bail by the police in November 2017. I did nevertheless find aspects of SC's evidence puzzling. His claim to lack of knowledge of the allegations of his abusing TC when he was young lacked credibility. His suggestion that his mother made allegations up about him to get him put into care was not corroborated by his mother's approach, as demonstrated by such records that were disclosed. His claim in cross examination to have made an anonymous referral before 2017 was not supported by the documentation. However, it is a huge leap to suggest he instigated these allegations many years later to get back at TC. Even more so to, in effect, enter into a conspiracy with two young girls to incriminate his brother. There can be all sorts of reasons for a witness not telling the truth. SC, with his dreadful background of years both in care and in prison, might have all sorts of reasons to lie. I did not find any evidence to suggest he had engineered this whole thing. It was no more than speculation by TC that he had asked the girls to lie and implicate him in an elaborate plot. The high point of TC's case is A's ABE interview on 3<sup>rd</sup> April. Here A said SC *"was the one who said TC needs to be locked away and he put like, ...ideas in my head"*. Her reasoning appeared to be if she lied it would help her mum. Later she said, *"I didn't mean to lie, at the point like, at the start of it, I just thought that if I said something then it would have just gone"*. Her comments in that interview are difficult to follow. They are by no means a confirmation of an elaborate plot by SC and A and F to implicate TC. To suggest two years on, as TC does, that the girls would wish to maintain this lie, when there was no longer any relationship with SC defied logic. F was clear on this when specifically asked this question in February 2020. TC's case is no more than speculation unsupported by any evidence. He relies on some oblique references to SC. There were features of SC's case and his involvement that raised questions. I consequently treated his evidence with great care. I could not rely on it without corroboration from other sources.

There are linked issues that touch upon the credibility of F's account, and that of A. They potentially undermine their accounts. These are first, the police decision not to prosecute and secondly, the retractions. At G309 Inspector S recorded in the occurrence log on 11<sup>th</sup> May when identifying the reasons for not pursuing this enquiry, *"This has been a very challenging enquiry for IO's due to the chaotic lifestyles of nearly every*

*party involved... ” He went on to cite “a pattern of behaviour that starts to be revealed during the investigation: 27/11/17 KP stated that F had previously lied about TC sexually touching her. At this time both girls were refusing medicals and to hand over mobiles for telephony enquiries.*

*20/12/17 KP and F met with police and there was mention of A being particularly problematic and saying that another male had sexually touched her but that that was in fact a lie.*

*21/12/17 when the police went to the family home on this date A had apparently collapsed and EMAS were called albeit she was said to be absolutely fine IO’s strongly believe that she was acting (supported by medical intervention).*

*The brother, B , was potentially a significant witness as he was living in the same house and yet had no disclosure whatsoever from either girl. Ultimately the girls have provided video interviews in which they state that the allegations had been fabricated between themselves and their uncle as they did not want TC living in the house. They both stated they had not been sexually assaulted by him and even found the whole thing amusing. The only anomaly in this investigation is the examination by Dr H on A which showed a healing injury on A but this does not indicate that an offence has taken place and certainly not compelling either way in this allegation. The bottom line is that TC has been on bail for several months on the back of these allegations and the pattern of behaviour displayed by the girls (as above), denial by TC and subsequent admission of fabrication of evidence gives an overall picture that these offences have not occurred. OiCs are considering further action in respect of this aspect. I am therefore satisfied that this is sufficient to cancel both occurrences”. A closer examination of the evidence shows this analysis, leading to the closure of the enquiry, to be at best misleading and, at worst, based upon false information. F did make an earlier complaint. It is wholly misleading for it to be recorded that, “F had previously lied” about a sexual assault. In fact, it has always been F’s case, as was clear from her ABE, that she was sexually assaulted some time earlier. KP accused her of lying. She had forced her to confront her alleged abuser. She then withdrew the complaint or, on another version, said she had lied. It was also recorded that the girls were both refusing medicals and to hand over mobiles. In fact, on that same visit DC B had a conversation with A concerning the medical. She said that she did not wish to undergo a medical straightaway but did not say that she refused to undergo one.*

DC B records in his statement that “*given the intrusive nature of the medical examination I respected A’s wishes and allowed her time to consider her options*”. At a later stage A did agree to a medical which took place in January 2018. F did initially agree to undergo a medical examination. It is right that at a later point she refused. A and F did agree to the handover of their devices. KP had given DC B incorrect information concerning the girls approach to crucial aspects of this enquiry. In connection with the interpretation of A’s behaviour on the 21/12/17 DC B accepted in hindsight there was an alternative explanation. It could be this was a young girl who was distressed and did not wish to return home. BS was the social worker who attended with DC B and did not share his interpretation. She recalled A was underweight and looked thin. A did not want to return home. She had fallen out with her mother, KP.

B had never been formally interviewed. This was despite being identified as part of the investigative strategy. It had been recorded at the outset of the enquiry, “*ABE from brother of victims B who is 15. He is key and may be able to provide information regarding earlier disclosures made by the victims*”.

It was also suggested that both girls had provided video interviews in which they stated the allegations had been fabricated. F was never formally interviewed again on this issue. There was a conversation with F, A, and KP all in the same room. A was spoken to at school in wholly unsatisfactory circumstances. It was an interview arranged through her mother, KP. It gave the impression, right from the outset, that A was not telling the truth. There was no liaison with social care. A had no one with her. She only made a partial retraction. She made clear there had been sexual abuse. There was no scrutiny or questioning of this by DC B. There was then an inexplicable delay until a formal ABE in April. This lasted some 12 minutes. There was no preparation or planning for that interview by DC B, as there should have been. There was no questioning as to why A was now saying the allegations were all lies, as opposed to her approach in February. She had no one with her in the interview. KP had brought her down. DC B thought she had all the support she needed. There was no examination of what she meant when she said in that interview “*it went on longer and I found out that I’m going to lose me mum and I’m going to lose my brother and sister because it’s their dad and I’ve already lost like my mum’s mum and aunty . Because not many people like him, because he’s abusive*”. This subsequent interview was

superficial. It was simply going through the motions before closing the enquiry down. A further error took place in relation to the CCTV enquiries at the flats where A alleged she was raped. An entry in the occurrence log at G308 states, “*CCTV enquiries at one of the offence locations has proved unfruitful. In fact, they don’t support the prosecution case.*” TC had accepted in his interview of 22<sup>nd</sup> November that A had accompanied him to work. He admitted that he had gone up to flat 13, which was unoccupied, with A in order to use the toilet. Even more surprising is that DC B was one of the interviewing officers on that occasion. So, lack of CCTV was hardly unsupportive. Yet DC B in his statement of 27<sup>th</sup> August 2019 wrote the absence of CCTV evidence undermined A’s account in her ABE and is why he considered that the CCTV footage “*did not support the prosecution case*”. In any event the police had only searched CCTV since 3<sup>rd</sup> November and it was by no means clear A was alleging it took place after that date. DC B indicated there was no CCTV available before that date. This was an error due less to superficiality than incompetence. Concerns on my part were heightened by an admission by DC B in evidence that, even though he was the officer in the case in relation to an investigation into serious allegations of child abuse, he did not view the ABE’s of either A or F. It has the appearance of an enquiry flawed from the outset with that kind of handling.

KP’s position was not properly analysed, leading to her having too much influence upon the investigation. She gave incorrect information to the officer, as shown above. She either failed to understand, or refused to acknowledge, the findings of the medical examination. She became the link person between DC B and A when she did not believe her daughter. DC B acknowledged that it was possible he felt a degree of sympathy to KP. On 27<sup>th</sup> November, after he had been allocated as the OiC, he visited the family home. He spoke at length with KP. He described how she was not “*coping well at all and is by her own admission very confused. I got the impression that KP just needed to talk to someone who wasn’t going to judge her and tell her what to do.*” Sympathy for a witness or even a suspect, when speaking to an individual in difficult circumstances, can be a commendable trait. However, if it leads to a lack of objectivity it is of concern. This was a family where the police were aware there were almost 300 social care records for each child. They had been to look at the records. The family had first come to the attention of social care in January 2009. Since then there had been concerns

surrounding KP and TC's cannabis use, the home conditions, parenting and general neglect. It was certainly the perception of A, much later in the enquiry, when an officer was to be assigned to pursue the matter again that she did not want DC B as , "*he liked my mum too much*". That analysis by A may be unfair but it certainly lends support to the view that DC B was overly sympathetic towards KP and consequently failed to remain objective and pick up on the obvious warning signs.

No account was taken of F and A's environment since the November allegations. The medical findings appear to have become obscured, as does the whole family history which should have raised alarm bells. There was no proper liaison or cooperative working with social care. In summary the police came to the view there was a pattern of behaviour displayed by the girls that gave an overall picture that these offences had not occurred.

This was a flawed police enquiry. The conclusion reached in May 2018 was based upon wholly misleading information and a lack of proper scrutiny of the available evidence. The faulty enquiry was partly due to a failure to liaise properly with social services.

However, it is correct that in a short space of time there were a large number of social workers. There was no continuity. I heard from social workers BS , EF , CM and CC who were all involved for short periods from December 2017 through to October 2018 .CC was a newly appointed social worker working alongside others. This made it difficult for the police in terms of liaison with such a high turnover. It also meant no sooner had a social worker grasped something of the family situation and perhaps developed a rapport someone else came in. Consequently no one was able to get a proper picture of what was happening. It meant A and F were inadequately supported at such a crucial time. In the early days after the allegations BS felt weekly visits combined with police involvement was sufficient. The girls were left living in an environment which was hostile and where ,in particular, A was constantly blamed for all that had gone wrong, as recognised by EF. Action should have been taken much earlier than it was. As an aside record keeping, for an abuse enquiry, was inadequate. Furthermore, there was no explanation for the delay in the PLO process being started.



In summary A and F were let down by a flawed police enquiry. They were vulnerable young girls and were left isolated and largely unsupported by social care, partly due to such a high staff turnover. EF did manage to identify some significant problems but was only involved for a short period. She saw the need in June 2018 to seek advice from her manager concerning threshold. The conclusion of the police enquiry in May 2018 is of no surprise in the light of the observed failings in the investigation. In many cases of this nature it would be a significant factor to weigh in the balance when assessing the credibility of the complainants. In this case the fact the police enquiry came to the conclusion it did can be largely disregarded when assessing F and A's credibility.

F's withdrawal, whilst inextricably linked to the police decision not to pursue this matter, cannot just be disregarded in assessing F's credibility. In the case of F there is not a formal withdrawal or retraction but there is evidence to show that she told DC B that her original account was untrue. The reasons for her withdrawal were never analysed. Within a few weeks she was indicating to social workers that her original allegations were true and wished to pursue them. That remains her position over two years later.

The chronology shows F making a disclosure at S Street in 2016. Then a little later withdrawing this. There then follows an ABE interview in 2017 in which she makes serious allegations against TC. Later there appears to be a retraction of some form. However when the later explanations for this are considered, together with the corroborative evidence of the pressure she was under due to the family situation and the approach of KP, I came to the conclusion that these actions by F do not undermine the veracity of both her S Street and November 2017 allegations. She was in an isolated and vulnerable position, where she sought to please KP and saw herself as responsible for the breakup of the family unit rather than identifying TC and KP as being the ones responsible. She was groomed to see KP and TC as the victims.

Whilst the LA bring the case, and there is no burden of proof upon TC, it seemed to me viewing the ABE of 22<sup>nd</sup> November that to suggest this was a manufactured account by a young girl having discussed it with A and SC was a suggestion that lacked any credibility. I concluded she gave a credible account from a child's angle of sexual abuse perpetrated by her step father over some period. F's account was a truthful one.

4.2 In relation to A's evidence I did not have the advantage of her giving evidence in these proceedings and therefore having the opportunity of hearing her answer questions, albeit in a controlled way, as happened with her sister, F. In assessing her evidence that is something of which I must take account, particularly when reflecting upon the seriousness of the allegations.

In her ABE interview A spoke about sexual matters with considerable naivety "*when I told L she said it's not sex if you don't want it, it's rape*" and "*my mum used to tell me....if someone raped you it would be from the back*". The ABE took place very shortly after A had made allegations to her school friend L and indirectly to her mother. Her ABE was largely consistent with those other allegations although she never went into detail in the earlier conversations. In her first account to the police she made reference to TC trying to get her drunk (see 3.4 above) in relation to the rape. This was not raised in the ABE and neither was it mentioned to her aunt, WG. However, the account given in the ABE was a credible one. There was no appearance of this being a manufactured one. As with F it was lengthy.

It has been suggested that there is inconsistency in her ABE when describing two events of abuse. She says when asked how many times something has happened, "*I can't remember, loads*". However, it is clear A differentiates between the sexual abuse of penetration, whether penile or digital, and "*small stuff*" as she puts it in the form of touching on her bottom and other places which occurred on many occasions.

The retraction evidence in relation to A is of greater import than with F. There was the school interview of 14<sup>th</sup> February, which was written up by DC B in his disclosure notebook. The circumstances leading to his visit to the school are illuminating. The police occurrence report refers to "*information was later received that A had fabricated the allegations*". A close analysis shows that TC, the suspect, told him the previous day in interview that A was now wanting to tell the truth. He said there had been a conversation between KP and A. In fact in his statement DC B says TC had told him A had disclosed it to her social worker, BS (G412). As a result, DC B spoke to KP on the telephone and KP confirmed it was true. At this point the only indications he had that A may not have been telling the truth were from KP, who had never believed her daughter and from the alleged perpetrator himself, when he had interviewed him under

caution. KP had mislead him back in November as to the girls' approach to the enquiry. If he had checked there would be a wealth of information as to KP's whole approach to these allegations. There was the anonymous referral from NSPCC that TC was visiting the house in January. He already knew someone in the family was speaking to TC. DC B felt he was the last person to hear anything. Yet he was using KP as a link in his investigation. Significantly KP said BS had told her not to tell DC B. A comment by KP that a social worker had advised her not to disclose something so important in a police enquiry should have raised alarm bells with DC B. It does not appear to have done so. A brief enquiry at that point by the officer may have prevented what subsequently followed. BS already had concerns about A, both her presentation and the pressure she was under. DC B's failure at this important juncture to speak to social care borders upon the negligent. The officer appears to have allowed himself to be manipulated by KP and TC.

A's retraction was such that she was in a very difficult position. She was spoken to at school without any support or warning from the officer (although KP may have told her which would be more alarming). DC B emphasised to her that she needed to be 100% truthful. His first question recorded was "*Were you telling the truth?*". When she did retract it was not a full retraction. A later explained that was deliberate on her part. There was then an inexplicable delay before the formal ABE. This time there was a complete retraction. She said her original ABE was all untrue. She implicated SC in this. However, her account was an odd one, as the officer accepted in evidence, yet he did not scrutinise it in any way or pursue lines of enquiry with A. This was on the basis that he felt she just did not wish to be there.

In A's case there is medical evidence that is corroborative of her account. It is more likely than not she has experienced vaginal penetration. DC B believed it to be a significant finding, particularly in the light of A's evidence to both him and BS she had not engaged in sexual activity with anyone else.

A reverted to her original account not long after this retraction. By 20<sup>th</sup> June she was telling EF she had been raped by TC but they (she and F) had been pressured by KP to retract their statements and say they were lying. A maintains this account. However, I have not had the opportunity of hearing her give evidence, for reasons previously discussed. I have not heard her cross examined, for example, on the retractions and her

evidence concerning SC. Consequently, her account at first sight is not as credible as that of F's.

I reminded myself of the lies direction. A's position was that she had lied. She did so by withdrawing her November 2017 account and saying it was untrue and implicating SC. Her evidence now is that is false. I accepted there are all sorts of reasons for witnesses to lie. The fact a witness has lied does not mean they have lied about everything. A's circumstances between her first account in November and her initial withdrawal were difficult. She was isolated and vulnerable. She was young. She was rootless during this period. There were self-harm issues in March. As BS recognised she was living in an environment where she was not believed, was being held responsible for the breakup of the family and the upset caused to MiC and MaC. She was, as described by BS, being "scapegoated". In these circumstances it might be understandable she lied when succumbing to that pressure for a period. "*Emotional pressure*" is one of the factors referred to in Lucas.

I then considered whether my findings in relation to F were able to corroborate the allegations made by A. Did his abuse of F show a propensity on the part of TC to commit sexual offences against young girls? This was not an isolated incident towards F. This was a pattern of abuse towards F involving many incidents of sexual behaviour. She was young. I concluded this pattern demonstrated TC did have such a propensity to act in this way. Consequently, I concluded that my findings in relation to F's allegations supported A's account. I was already of the view that A gave a credible account in her ABE. Any divergence between this and her accounts given to others was minimal, particularly in the light of the fact all other accounts were brief. I also noted WG's very frank discussion with her the evening prior to her speaking to the police. I also had the medical evidence. So, despite the withdrawal and the issues raised concerning SC, I concluded that A was telling the truth in relation to the allegations she made in November 2017 in her ABE concerning TC. This finding was supported by my findings in relation to F. I did not come to that conclusion simply because of my findings in relation to F.

4.3 F made a further allegation of physical abuse perpetrated by TC when she was caused a black eye. This was denied by TC, although in evidence he accepted that F did receive a mark below the eye, but not one occasioned by him. I found F's evidence credible. Coupled with her

general evidence about TC's violent outbursts which was corroborated by A and JC. She, whilst a vulnerable witness, was one of the few people outside of the family, who was able to give evidence about what life was like in the house. Despite the undertakings she saw some or all of the family together on a number of occasions. She knew the family dynamics. Whilst she never saw TC punch anyone she saw his violent outbursts. KP, and I treat her evidence with care, spoke of TC's aggression, although again she said she never saw him hit the children. TC himself accepted he would get angry and in his response to threshold accepted a series of incidents that are now set out at paragraphs 29- 34 of the composite schedule. I therefore was satisfied with F's evidence concerning TC causing the black eye. It was entirely in keeping with TC's temper and violent outbursts in the house.

4.4 Failure to protect and emotional harm. These all relate to KP's action, or inaction, in relation to F and A. She made further concessions in her revised statement. In her closing submissions Ms Mulrennan, on KP's behalf, largely accepted these facts sought by the LA, with a few areas of dissension. KP did not accept that she directly accused A and F of lying (see paragraph 9 of her revised statement), simply that she made comments to other family members and these may either have been overheard or passed on. She expressed regret at not believing the girls earlier. She said in evidence when she viewed the tapes it all made sense to her.

She clearly was very upset both when giving evidence and listening to other parts of the evidence, particularly from TC. However, emotions are not necessarily a guide to whether someone is telling the truth. If she had been emotionally flat, it would not connote that she was lying. It is now patently clear to her what damage has been caused to A and F. The social work evidence in particular was overwhelming that A, and F to a lesser extent, were under a barrage of comments that they had lied.

- BS was very concerned at A's position as she was hearing repeatedly that the events did not happen. She was told on a number of occasions A had retracted.
- EF was told by A and F that they were pressurised to retract their statements.
- It was evident to CM that KP did not believe the girls. She even told her that she did not know the conclusion of A's medical. Yet she had

been present. She would have known the implications of the findings. A told her in July that she had retracted because of pressure from KP.

- CC said KP did not believe the allegations, although she detected KP was different towards F. She did not say she believed F but was more willing to forgive her. KP would also describe A as being “*messed up*” and as “*needing help*” because she was lying. A was indicating she did not wish to be somewhere she was not believed. A made clear to her she retracted because she was under pressure from KP. She was not going to retract a second time. A felt she was portrayed as disturbed and a liar.

The LA seek a finding (paragraph 14) that Mother “..... *caused emotional harm by failing to believe .....and support*”. The headline describes conduct by omission on the part of KP.

However, a careful examination shows a body of evidence that KP did not just fail to believe and support her daughters but pursued an active agenda of pressurising them to retract the allegations.

- She placed feelings of guilt upon them for breaking up the family and causing upset to their younger siblings. Both A and F were left distressed and emotionally unsupported, feeling they were the guilty parties and KP was the victim.
- KP pursued a campaign of deception seeking opportunities for TC , the alleged abuser to meet the children. CC was of the view that KP had coached MaC to lie about spending weekends at his friend’s house, rather than indicate he had been at his dad’s. There was an anonymous referral from NSPCC in January of TC visiting the house. I heard the evidence of JC of the meetings as well as the accounts of F and A shared with professionals of these encounters. I am also satisfied that KP, despite her protestations was present when A apologised to TC. JC, whilst a vulnerable witness, had no reason to lie about this. TC accepted there was an apology. If A was telling the truth, and I accept she was, why else would she apologise to her abuser other than being forced to do it? KP was the only person exerting that pressure. She persuaded the victim to apologise to the perpetrator of the abuse. Admittedly KP’s situation at that time was desperate. She had numerous health issues. She was depressed. Despite the relationship with TC being abusive, as she now in

hindsight accepts, she had become utterly dependent upon TC. She faced the daily reality that the younger children missed their father. Whatever the cost she, at that moment in time, wanted the family back together and she consequently prioritised her own needs over protecting and supporting her two older daughters who had been abused by him. She was lying to social care about meeting up with TC. On 21<sup>st</sup> June there was a discussion between KP and EF and CM concerning the findings of A's medical. KP was indicating that the medical did not support the view A had been sexually abused. EF corrected her and then asked her how that made her feel. She said, *"that shouldn't stop TC seeing his children"*.

- KP took A to the police station in April 2018 when she formally retracted her allegations.
- Despite her presence at the medical she either failed to understand or deliberately misrepresented the findings.
- What was clear was that it was KP's all consuming aim at that time to see the statements retracted. Similarly, to tell DC B that A and F were unwilling to undergo medicals or hand over mobiles was misleading. Such comments by KP were attempts to manipulate the situation.

Initially when these allegations came to light in November 2017 KP was shocked. She told the police the relationship was over. She did a few days later provide assistance and acknowledge F had made an allegation previously. However, as time went on, and the family was torn apart, her attitude changed to open hostility towards the girls and their allegations. No doubt this was driven by her own insecurity. Rather than an absence of belief or support there is ample evidence that KP was actively pursuing an agenda to get A and F to withdraw their allegations. She did this by pressurising them and seeking to manipulate events. This was in the hope that the family could return to the pre November situation. KP remained in a relationship with TC right through to October 2018. On 2<sup>nd</sup> November there was a report (see G478) of KP causing a disturbance at TC's flat as he had a new girlfriend.

Thus, there was evidence of positive action by KP to get A and F to withdraw their allegations. Such a finding was not one specifically pleaded by the LA. Consequently, I reminded myself of the self direction in paragraph 2.8 above. I e mailed the advocates notifying them of

potential findings from the evidence. Specifically, I sought responses from the two most affected parties, namely the LA and KP. In fact Ms Giles accepted that the “headline” for paragraph 14 of the composite schedule did not accurately reflect the contents. She pointed out that all the pieces of evidence I had referred to were specifically pleaded or contained in the evidence. Ms Mulrennan accepted in her written response that *“that many of the items identified by the court are included in the schedule of findings and were addressed during cross examination of the mother and in the oral evidence of other local authority witnesses”*. Ms Giles concluded her additional submissions with this comment *“On behalf of the Local Authority, it is submitted that there is significant evidence to suggest that that A and F were not just affected by ‘picking up’ on M’s emotion in relation to the allegations but that she made sustained and proactive attempts to encourage the children to resile from their allegations by virtue of her loyalty to TC”*. By the conclusion of the fact finding hearing I viewed that as a potential finding. This is more a case of the headline of the finding sought in paragraph 14 not actually in keeping with the evidence relied upon for that finding in paragraphs 14-22. The evidence supports a finding wider than the headline. KP’s action were not just omissions on her part but positive action to get A and F to withdraw their complaints. However, this was not a conclusion I reached apart from the evidence. It was based upon the evidence I both read and heard, and which KP was able to challenge. Both the LA and KP were able to make further submissions on this point. The headline was understating the LA position, as pleaded in the subsequent paragraphs. It is not a question of the judge going off on a “frolic of his own”. It is based upon the evidence I both heard and read.

KP undoubtedly has changed her position as time has gone on. Her latest position came very late – during the actual final hearing and some 14 months after the ultimate termination of her relationship with TC. Whether it has come about as a matter of facing the harsh reality of the overwhelming nature of the evidence or genuine and heartfelt remorse is not something I am in a position to answer from the evidence and is not the purpose of this fact find hearing.

4.5 The remaining paragraphs deal with neglect (paragraphs 24- 28) in relation to MiC and MaC, domestic violence (paragraphs 29-34) and drug misuse (25-37). KP in a combination of her response document, her revised position, her oral evidence and closing written submissions



concedes these. TC conceded in his evidence paragraphs 29-34 dealing with domestic violence.

## **5. Conclusion**

I was satisfied to the requisite standard of proof, namely it was more likely than not, that TC sexually abused A and F as set out in the composite schedule. I came to the same conclusion in respect of the physical harm in paragraph 13, directed towards F.

In relation to the “headline” in the failure to protect in paragraphs 14-22 I came to the conclusion that it was more than a failure to believe and failure to support F and A on the part of KP. I concluded there was a positive agenda to seek to persuade A and F to resile from their November 2017 complaints.

Finally, the remaining paragraphs in the composite schedule have now been accepted.