Case No. ZW18C00558

IN THE WEST LONDON FAMILY COURT

Date: 17th June 2020

Before:

HIS HONOUR JUDGE OLIVER JONES

(In Private)

B E T W E E N:

A LOCAL AUTHORITY

Applicant

- and -

(1) THE MOTHER
(2) THE FATHER
(3) & (4) Y & X
(through their Children's Guardian)

Respondents

(5) THE INTERVENER

Intervener

MS I. WATSON & MR. J. NORMAN (instructed by Legal Services, a local authority) appeared on behalf of the Applicant.

MS K. BRANIGAN QC & MS S. BRANSON (instructed by Lock and Marlborough) appeared on behalf of the First Respondent mother

MS. B. CONNOLLY QC & MS H. GOMERSALL (instructed by Powell Spencer & Partners) appeared on behalf of the Second Respondent father

MR. A. BAGCHI QC & MR. A. ELGAHDY (instructed by Burke Niazi) appeared on behalf of the Intervener

MR. A. SHAW & MR. S. PROUT (instructed by Dawson Cornwell) appeared on behalf of the Guardian.

J U D G M E N T

1. These are care proceedings brought by the local authority. They are represented by Ms Watson and Mr Norman. The children who are the subjects of the proceedings are Y and X , sisters, who are young teenagers. The children are represented by their counsel, Mr Shaw and Mr Prout through their Guardian. The mother of the children is represented by her counsel, Ms Branigan QC and Ms Branson. The father is represented by his counsel Ms Connolly QC and Ms Gomersall. There is an intervener, who is the adult older brother of the children. He is represented by Mr Bagchi QC and Mr Elgadhy.

2. These are very long-running care proceedings. This part of the case has been a finding of fact hearing to determine a schedule of findings sought by the local authority including allegations that the intervener sexually abused his sister X and that the parents failed to protect X. The content of this fact-finding hearing and of this judgment is difficult for any right-minded individual. As a result, this whole process given its subject matter must have been particularly painful and upsetting for the parents to go through.

Essential background

3. Y and X are sisters with developmental delay and complex health and developmental needs including emotional, behavioural, social and communication difficulties and disorders. They appear far younger than their chronological age.

4. Y and X are the youngest of the sibling group. The older siblings are all now adults.

5. The parents met at a specialist education provision and have been together for many years. The mother, has a full scale IQ of 61 (0.5^{th} percentile), which is in the Extremely Low range.

6. The father, has significant health needs, including conditions which impact on how much he can do. He has been described as being largely passive in his engagement. His IQ has been assessed to be 52, also in the Extremely Low range.

7. There has been long-standing social services involvement with the family. Y and X were removed from the care of their parents following a hearing on 7th November 2018. Since then they have remained placed together as the only residents of a residential unit.

8. The intervener has been arrested four times since 2018. In the summer of 2018 he was arrested on suspicion of possessing child pornography. He was living in the family home at that time, but subsequently was unable to return due to bail conditions.

9. Later the same month the intervener was arrested in relation to possession of indecent images. At that time he had been living in the family home, however from then on he was not allowed to reside there.

10. In late summer 2018, the intervener was arrested in relation to allegations of sexual assault of his daughter Z.

11. In late autumn 2018, the intervener was arrested on suspicion of raping his niece. The investigation was not proceeded with.

12. In September 2019 X gave her first ABE interview. In November 2019 she underwent a second ABE interview.

13. In November 2019, the intervener was arrested on suspicion of the rape of a child under 13 (Z) and possession of indecent images of children. He was remanded in custody.

14. Later in November 2019 the intervener pleaded guilty to counts including: (i) oral rape of his daughter Z (born in 2014); (ii) possession of photographs of himself sexually abusing Z; and (iii) 6 other counts relating to indecent images of children

15. In December 2019, X underwent a 3rd ABE interview.

16. In February 2020 the intervener was sentenced to a 16-year prison sentence with extended licence of 5 years.

How this hearing took place

17. This case has been beset by delays and difficulties. I first commenced what was intended to be a final hearing over 5 days between 15-19 July 2019. That hearing could not be concluded because there was insufficient time available. Unfortunately, court time was lost to allow for the parents and their lawyers to consider and give instructions due to a considerable amount of late-arriving documentation from the local authority and the Guardian. In any event, the pace of the hearing was slow because the father's cognitive functioning had meant that in order to assist him to understand and engage in the proceedings, for every 40 minutes of evidence that was heard, the court would then break for 20 minutes to allow his intermediary to recap and assist him. Despite the best efforts of all involved, there were nonetheless times when the father was not coping and so the court had to rise early. At the end of that week, the local authority's case had not even been concluded. I was invited to order a fresh parenting assessment. I gave a short judgment identifying the shortcomings of the parenting assessment about which I had heard evidence and I directed a further ISW parenting assessment of the parents. The case was then listed for two further weeks in October and November 2019, with the intention of completing the final hearing.

18. Prior to the October 2019 hearing, it became known to the parties that there was an active police investigation into the intervener and his actions towards his daughter Z as well as towards X who had in the intervening period been ABE interviewed. As a result of those investigations, the local authority's approach to the case shifted and it sought to rely on the allegations against the intervener in respect of X.

19. It was a difficult time for all the parties with disclosure issues arising and the local authority being unable to set out clearly its case without having received all the disclosure.

20. As a result of those issues as well as the need to join the intervener the 10 days identified for this case in October and November were vacated, and replaced by a series of disclosure hearings. The intervener's role was made more complicated because he also had need of an intermediary to assist him. In addition, he was remanded in custody at an early stage in the criminal proceedings which made obtaining his instructions difficult.

21. The case was set down for a 10-day fact-finding hearing to commence on 2nd March 2020 although due to other commitments I was obliged to reduce the hearing to 9 days. Arrangements were made for the hearing to take place at the Isleworth Crown Court to enable the intervener to be produced to the court and thereby to facilitate the work of his intermediary and his legal team. As it happened, the intervener refused to get in the prison van and the case initially proceeded in his absence. By the third day the intervener had been visited at prison by Mr Elgadhy and it became clear that his objection to attending was derived primarily from his fear that if he left HMP Wandsworth for a court hearing he would be sent on to HMP Wormwood Scrubs afterwards. Arrangements were made for him to be video-linked for the remainder of the hearing at Isleworth Crown Court. On Day 9, the intervener attended to give evidence in person. I had made a request of the governor at HMP Wandsworth to make provision for the intervener to return to that prison after he attended court. The governor graciously agreed and so the intervener attended for his evidence. The court was unable to complete the intervener's evidence that day. Unfortunately towards the end of the day, the father suffered a health crisis and needed to seek medical attention.

22. The case was listed part-heard to resume three weeks later for 4 days in the week of 6th April 2020. While it was reasonable to expect to conclude the evidence during that time, it was apparent that more time would be likely to be needed for closing submissions and judgment.

23. During that period of the adjournment, the Coronavirus COVID-19 public health emergency developed in the UK and the social distancing restrictions were put in place.

24. On 1st April 2020 I listed a remote telephone directions hearing using BT Meet Me in order to give consideration to whether the hearing could resume and if so how. The parties sought to continue and proposed utilising a video platform called Zoom. Mr Bagchi QC addressed me in relation to his recent experience of undertaking a complex multi-day case before Mr Justice Hedley using Zoom and also informed me that the Court of Protection had been utilising it as their preferred means of undertaking remote hearings.

25. Suitable arrangements were made to enable the Zoom platform to be set up and managed by Mr Bagchi's chambers and I gave permission for them to undertake the recording of the hearing electronically which in due course would be made available to the court. In addition, considerable thought had gone into how each of the parents would access the hearing. This was made more complicated by the fact that the father due to his health conditions was identified to be at high risk from Covid-19 and therefore had received advice to shield (i.e. not leave his home address) for 12 weeks. There were arrangements in place for the parents to have access to separate laptops at their home to observe the hearing and interact with their teams.

26. In relation to the mother, it was planned that she would travel to her solicitors' offices and give her evidence from there. In addition, at my request remote access control of the father's laptop was enabled so that junior counsel acting for him was able to log on remotely and control his laptop from a distance so that he did not have to navigate his way through unfamiliar software with all the risks that would entail.

27. Importantly for this case, one of the strengths of the Zoom platform was it enabled a number of private video breakout rooms to be set up alongside the main hearing area. This meant that during the twenty-minute breaks which occurred every hour, it was possible for the individual legal teams, their clients and where applicable their intermediaries to gather for private discussions and recapping. In this case, that was an essential facility.

28. It is important to recognise that this situation arose during the earliest days of remote hearings in the Family Court and there was a considerable amount of new information arriving all the time. Mr Justice MacDonald's comprehensive document, "The Remote Access Family Court" had been released in its 3rd version on 3rd April 2020 which outlined a number of recent experiences by High Court Judges using Zoom. It did not identify any security problems with Zoom. I was able to side-step the issues identified with incompatibility with judicial DOM1 laptops by utilising a different laptop to join the conference.

29. In addition, prior to the hearing I had seen an undated HMCTS document headed "Use of videoconferencing software: for HMCTS intranet and cascade to Delivery Directors, Heads of, RSUs and DSOs". It is not clear who the author of the document is. That document

talks in terms of the use of Zoom but indicated that HMCTS advised against Zoom unless there is an "urgent operational need". It indicated that Judges would not be able to obtain IT support for the use of Zoom and wrongly indicated that Zoom does not allow for the use of recording of hearings. It also set out that the information commissioner's office has advised that Zoom is GDPR compliant.

30. There was a further difficulty to overcome in arranging the hearing. Although the intervener had been produced for his oral evidence before the adjournment, it was no longer feasible to produce him for the resumed hearing. His legal team had investigated the costs of arranging a bridging link between the prison's video link system and Zoom. The costs identified were extremely high. I also had concerns about whether the arrangements could be put in place in the short time available. Instead, I arranged for another laptop, which was titled "link computer" to be joined to the Zoom meeting. The court's prison video link equipment was focussed on the "link computer" and it was positioned so that its camera captured the whole of the prison link screen. I sat in the same room as the video link so I had the benefit of viewing the intervener on the large screen as well as through my computer.

31. Care had to be taken about having two computers linking to Zoom in the same room. One device had to be silent and muted while the audio went through the other to avoid audio feedback. At the time, the Covid-19 crisis had caused the court at Barnet where I was sitting to be understaffed to an unprecedented degree. Although I am grateful to the staff for the support they provided, I was obliged to manage the various computers, microphones and the prison video link to keep it all working efficiently. Generally, this system worked very well. The main issue being user error if I failed to unmute on one of the many devices but that was quickly identified and resolved.

32. In terms of linking the intervener to the proceedings it worked well. During the breaks, I stopped the recording and vacated the court room and virtually moved the link computer into the break-out room for the intervener's team. That enabled them to have private legal consultations and for the intermediary to undertake her work with him.

33. The intermediaries' function appeared to work well. Both intermediaries were able to use their Zoom setting so they could focus on their respective client's video throughout the

hearing. This meant that they could monitor continuously irrespective of who was speaking at the time. In the case of the intervener, his intermediary was also able to send written messages privately to the intervener to reinforce points and check his understanding and he responded using hand signals that they had arranged. Both intermediaries provided mid-trial reports during the resumed hearing and indicated that the arrangements were working well.

34. Unfortunately, we were not able to conclude the evidence in the available four days and I made arrangements to conclude with the father's evidence on the next working day after Easter, on Tuesday 14th April. On that day, there was the only serious IT glitch. The wi-fi in the parents' home had seemingly deteriorated and the mother's ability to join and observe the proceedings from a separate room proved to be impossible. Instead, the mother sat next to the father while he gave his evidence and was able to watch using the same laptop computer as he was watching. This was not ideal, but both parents showed themselves to be respectful of the court's requirement not to communicate during the father's evidence. The issues of being able to communicate with their own legal teams was reduced, because the father was unable to do so while he was in his evidence.

35. There was another technical difficulty of note during video-linked evidence – during one afternoon session while Ms Watson was cross-examining the mother, Ms Watson's audio developed a slight echo. Attempts were made to cure this but without success. In the end, it was better to press on despite the echo which did not obscure the questions. The following day it had resolved and the issue did not reappear.

36. Overall, my impression is that the process of conducting the hearing by Zoom video link worked well. The software coped with joining 24 participants to the hearing. My settings allowed me to have available on screen to observe whoever was asking questions at the time, the witness, each of the parents, the two intermediaries and the intervener. It meant that I was in effect able to replicate the benefits of observing the parties "in the well of the court". In fact, given the large numbers involved in the case, I now had a better view of those key players than I had had previously when sitting at Isleworth Crown Court where the available courtroom size had meant that the lawyers occupied the advocates' benches while the other professionals and lay parties were spread widely around the courtroom occupying the jury benches, the press seats and the public areas.

37. During the course of the hearing more information became available about remote hearings and the use of technology. On Tuesday 7th April 2020, information was cascaded down from the leadership judges to the effect that Zoom was to be avoided due to risks related to its security. I corresponded with my leadership judges and obtained clarification from Mrs Justice Theis that Zoom was not expressly prohibited and that if I was satisfied that it is the best way to complete the hearing, bearing in mind the difficult circumstances of the case, I may take the view that is the right way to proceed. That remained my view and so I continued with the hearing.

38. After the close of business on Thursday 9th April 2020, I received a communication via the Council of Circuit Judges titled, "Message for Circuit and District Judges sitting in Civil and Family from the Lord Chief Justice, Master of the Rolls and President of the Family Division". Over the weekend, I was able to secure permission to share that message with the parties in the case.

39. The key point was that "The overarching criterion is that whatever mechanism is used to conduct a hearing must be in the interests of justice, that issue being assessed by reference to the unusual circumstances that prevail and the unhappy alternative is a hearing is adjourned. Every hearing we conduct in whatever form must provide a fair hearing". Of course, I accept that entirely.

40. The message went on to identify a number of examples of when, generally and in family cases in particular, a remotely conducted final hearing may be appropriate:

"Generally:

a. If all parties oppose a remotely conducted final hearing, this is a very powerful factor in not proceeding with a remote hearing; if parties agree, or appear to agree, to a remotely conducted final hearing, this should not necessarily be treated as the 'green light' to conduct a hearing in this way;

b. Where the final hearing is conducted on the basis of submissions only and no evidence, it could be conducted remotely;

c. Video/Skype hearings are likely to be more effective than telephone. Unless the case is an emergency, court staff should set up the remote hearing.

d. Parties should be told in plain terms at the start of the hearing that it is a court hearing and they must behave accordingly.

In Family Cases in particular:

e. Where the parents oppose the LA plan but the only witnesses to be called are the SW & CG, and the factual issues are limited, it could be conducted remotely;

f. Where only the expert medical witnesses are to be called to give evidence, it could be conducted remotely;

g. In all other cases where the parents and/or other lay witnesses etc are to be called, the case is unlikely to be suitable for remote hearing.

h. Where cases have been listed for full trials over the next 3 weeks the listing be reviewed by you as DFJ together with the allocated judge in the light of the above parameters. Where it is decided not to proceed with the planned full trial, the case should be kept in the list as an IRH in the hope that, at least, the issues can be narrowed."

41. Before the hearing resumed to hear the father's evidence, I invited all parties to consider whether in the light of that message, any of them sought to make any submissions about the remote hearing process and whether any adjournment was needed to enable face-to-face evidence from any of the witnesses. No party took issue with the process of the remote hearing. Ms Connolly QC on behalf of the father addressed me and submitted that the father was very anxious for matters to proceed and that the technical difficulties that had created concern about the hearing had been overcome. She submitted that the father's ability to retain information was concerning over the four-week adjournment that had already occurred and any further adjournment may have a pronounced effect on his ability to retain information and thereby would undermine his ability to have a fair trial.

42. The case proceeded and the father's evidence was concluded. There was a delay to the afternoon session because the intervener was no longer at the video suite in the prison. It transpired that he had returned to his cell and was refusing to come out. I was told by his legal team that the intervener had been struggling with low mood and they were not

surprised by this development. There was no application to adjourn, and the evidence concluded.

43. Directions were made for written submissions to be provided to the court. In addition, plans were made for the intermediaries to be able to assist the father and the intervener to understand the written submissions.

44. The process of preparing this judgment has been extremely time consuming and during the time that I undertook it, further developments have occurred in terms of the use of remote hearings. The judgment of Mr Justice Williams in *A Local Authority v The Mother & Ors* [2020] EWHC 1233 (Fam) provides a helpful summary of the developments. In respect of the factors that Williams J sets out:

(i) The importance and nature of the issue to be determined, is the outcome that is sought an interim or final order?

This is a fact-finding hearing of serious sexual abuse allegations and failure to protect. The findings may have a significant effect on the outcome of the proceedings.

(ii) *Whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the child or the other parties*?

There is a special need for urgency in this case. It is part-heard. The father and the intervener have difficulties with retaining information such that they require the help of an intermediary. The father is "shielding" and so would not be safely able to attend court for a face-to-face hearing for at least 12 weeks. There is a real risk that the passage of time could cause a significant reduction as how much of the earlier part-heard hearing could be remembered by the time the hearing resumes. A delay in the order of around 12 weeks would be likely to cause a significant disadvantage to the father and the intervener.

(iii) Whether the parties are legally represented

All parties are well represented by highly capable and experienced legal teams. While remote hearing technology has been a new experience for everyone involved, this case

has been blessed to have a group of lawyers who were capable of adapting to and facilitating the effective use of the technology.

(iv) The ability, or otherwise, of any lay party to engage with and follow remote proceedings meaningfully. This factor will include access to and familiarity with the necessary technology, funding, intelligence/personality, language, ability to instruct their lawyers (both before and during the hearing) and other matters

The cognitive functioning of both parents and the intervener (particularly the father) have posed significant challenges throughout the proceedings in terms of their ability to follow the proceedings generally. That was the case prior to the need for remote technology arose and remained an issue throughout. The legal teams worked impressively well to ensure that suitable equipment was available to the parents (laptops) and to assist them to engage. I facilitated the means by which the intervener could be linked to his legal team and intermediary. The provision of regular breaks throughout the process meant there were ample opportunities for recapping and taking instructions. I recognise that for the parents in particular, the use of remote technology must have been stressful and alien. I am confident that the way it was utilised on their behalf would have assisted them greatly.

(v) Whether evidence is to be heard or whether the case will proceed on the basis of submissions only. The source of any evidence that is to be adduced and assimilated by the court.

The remaining evidence was to be the oral evidence of the lay parties and one of the children's adult siblings. It was all contested evidence, dealing with factual matters. In the case of the intervener, he had already commenced half a day of face-to-face oral evidence before the matter had to be adjourned part-heard.

(vi) The scope and scale of the proposed hearing. How long is the hearing expected to last?

This fact-finding hearing has been a substantial undertaking. The remote hearing aspect of it was due to last for a further 4 days of evidence but ultimately took 5 days.

(vii) The available technology

As I have indicated, the use of the Zoom platform enabled a sophisticated level of engagement with the case. It was essential that the intermediaries could observe their clients, it was essential that they could have break-out sessions with their clients, it was also important to facilitate effective discussions between the various legal teams and their clients. All this was achieved.

(viii) The experience and confidence of the court and those appearing before the court in the conduct of remote hearings using the proposed technology

At the time, the court's experience was limited to a preliminary hearing with the advocates to test out the technology. That test had been very successful. With the exception of Mr Bagchi QC, the advocates appeared to be new to the process whereas Mr Bagchi had the benefit of recent experience. I am particularly grateful to the clerks at Mr Bagchi's chambers who shouldered much of the technological burden to set up the Zoom technology and to Mr Elgadhy who took on the role of administering it. The parents were unfamiliar with the technology. They had the benefit of having tried it out with their legal teams prior to the hearing. They appeared to me to be accepting of the need for it and keen to press on with the case.

(ix) Any safe (in terms of potential COVID 19 infection) alternatives that may be available for some or all of the participants to take part in the court hearing by physical attendance in a courtroom before the judge

Put simply, at the time this simply was not available. Subsequently hybrid courts and face-to-face hearings have been developed to some extent but in any event neither of these alternatives would have been suitable for the father due to his shielding and possibly not for the intervener due to his incarceration and the need to maintain security.

45. With the benefit of hindsight, looking at the factors outlined by Williams J, I remain firmly of the view that in order to be fair to all parties, the case simply had to go ahead. This was primarily because of the impact of delay on the ability of the father in particular to engage with the case. While I do not dismiss the difficulties of having a remote hearing on the parties, the problems that were thrown up were to a greater extent mitigated by the effective and considered use of the remote technology.

46. I would like to express my sincere thanks to all those involved in the remote part of the final hearing. There was a real collective effort by all the advocates, their clerks and the solicitors to make sure that everything worked and due to their hard work and enthusiasm, it did. I have previously expressed but I repeat my thanks to the parties who also had to adapt and cope with this new way of working which must have been stressful and difficult for them.

The law

47. The advocates in their written documents have taken great care to ensure that I have fully taken into account the relevant legal principles. I have been reminded of the summary of legal principles provided by Baker J as he was then in *A Local Authority v (1) A Mother (2) A Father (3) L & M (Children, by their Children's Guardian)* [2013] EWHC 1569 (Fam) as well as from a number of other cases:

48. The burden of proving the allegations lies with the local authority. It is not for the intervener or the parents to prove they did not do something that is alleged.

49. In order to prove an allegation, the civil standard of proof must be met – the balance of probabilities.

50. "The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. As has been observed, *"Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities"* (Re B [2008] UKHL 35 at [15])" – per MacDonald J in AS v TH (False Allegations of Abuse) [2016] EWHC 532 (Fam).

51. The decision on whether the facts in issue have been proved to the requisite standard must be based on all of the available evidence and should have regard to the wide context of

social, emotional, ethical and moral factors *(A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).

52. Where sexual abuse of a child is alleged, the court should adopt a two-stage process. First, is there evidence of sexual abuse? If so, is there evidence of the identity of the perpetrator (*Re H (Minors); Re K (Minors)(Child Abuse: Evidence)* [1989] 2 FLR 313 and *Re H and R (Child Sexual Abuse: Standard of Proof)* [1995] 1 FLR 643).

53. "It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence and not suspicion or speculation." Per Munby LJ as he was then in *Re A (A Child) (fact-finding hearing: Speculation)* [2011] EWCA Civ 12.

54. "Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and 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." Per Butler Sloss P in *Re T* [2004] EWCA Civ 558.

55. "If a legal rule requires the facts to be proved (a "fact in issue") a judge must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1." Lord Hoffman in *Re B* [2008] UKHL 35.

56. The failure to find a fact proved on the balance of probabilities does not equate without more to a finding that the allegation is false (*Re M (Children)* [2013] EWCA Civ 388).

57. "The evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and the impression it forms of them (Per Baker J as he was in *Re JS* [2012] EWHC 1370**).**

58. A decision by the court to make no findings, or only some of the findings sought by the local authority does not constitute a 'failed' or 'unsuccessful' outcome. As Baroness Hale observed in *Re S-B* [2010] 1 FLR 1161 at [19]:

"We should no more expect every case which a local authority brings to court to result in an order than we should expect every prosecution brought by the CPS to result in a conviction. The standard of proof may be different, but the roles of the social workers and the prosecutors are similar. They bring to court those cases where there is a good case to answer. It is for the court to decide whether the case is made out. If every child protection case were to result in an order, it would mean either that local authorities were not bringing enough cases to court or that the courts were not subjecting those cases to a sufficiently rigorous scrutiny."

59. *Re A (Children)* [2018] EWCA Civ 1718, King LJ said this:

"*57. I accept that there may occasionally be cases where, at the conclusion of the evidence and submissions, the court will ultimately say that the local authority has not discharged the burden of proof to the requisite standard and thus decline to make the findings. That this is the case goes hand in hand with the well-established law that suspicion, or even strong suspicion, is not enough to discharge the burden of proof. The court must look at each possibility, both individually and together, factoring in all the evidence available including the medical evidence before deciding whether the "fact in issue more probably occurred than not" (Re B: Lord Hoffman).*

58. In my judgment what one draws from Popi M and Nulty Deceased is that:

i) Judges will decide a case on the burden of proof alone only when driven to it and where no other course is open to him given the unsatisfactory state of the evidence.

ii) Consideration of such a case necessarily involves looking at the whole picture, including what gaps there are in the evidence, whether the individual factors relied upon are in themselves properly established, what factors may point away from the suggested explanation and what other explanation might fit the circumstances.

iii) The court arrives at its conclusion by considering whether on an overall assessment of the evidence (i.e. on a preponderance of the evidence) the case for believing that the suggested event happened is more compelling than the case for not reaching that belief (which is not necessarily the same as believing positively that it did not happen) and not by reference to percentage possibilities or probabilities".

60. When assessing whether or not allegations of sexual abuse are proved to the requisite standard, the court should focus on all of the relevant evidence in the case, including that from the alleged perpetrator and family members (see *Re I-A (Allegations of Sexual Abuse)* [2012] 2 FLR 837)

61. "Much material to be found in local authority case records or social worker chronologies is hearsay, often second- or third-hand hearsay. Hearsay evidence is, of course, admissible in family proceedings. But…a local authority which is unwilling or unable to produce the witness who can speak of such matters first-hand, may find itself in great, or indeed insuperable, difficulties if [the parent denies the allegation]"…

"It is a common feature of care cases that a local authority asserts that a parent does not admit, recognise or acknowledge something or does not recognise or acknowledge the local authority's concern about something. If the 'thing' is put in issue, the local authority must prove the 'thing' and establish that it has the significance attributed to it by the local authority" (Munby J in Re A (A Child) [2015] EWFC 11; [2016] 1 FLR 1).

62. A Lucas direction is appropriate in this case. There may be a number of reasons why a person may tell a lie. A person may deliberately lie because they are guilty of what is alleged, but they may lie for other reasons, for example, to bolster a weak case, to protect someone, out of panic, out or fear or to cover up disgraceful or embarrassing behaviour. If a person lies about one matter, it does not mean they are not telling the truth about something else. *(R v Lucas* [1981] QB 720).

63. The applicability of the Lucas direction to family proceedings was highlighted by Ryder LJ In *Re M (Children)* [2013] EWCA Civ 388:

"A witness may lie because she lacks credibility, or because she has an innocent motive for lying. If she lies about the key fact in issue, that is one thing; if she lies about collateral facts, that may be quite another. A judge of fact may not be able to separate out every fine distinction, but may nevertheless conclude that an allegation is proved, despite the fact that the witness has lied about other matters."

64. In *Gestmin SGPS SA v Credit Suisse (UK Ltd and Another*) [2013] EWHC 3560, Leggat J gave guidance as to the reliability of recollection when compared with documentary evidence (albeit in commercial cases) and *in Lancashire County Council v C, M and F (Children; Fact Finding Hearing)* [2014] EWFC 3, Peter Jackson J (as he then was) said this about the practical application of the *Lucas* direction:

"To these matters, I would only add that in cases where repeated accounts are given of events surrounding injury and death, the court must think carefully about the significance or otherwise of any reported discrepancies. They may arise for a number of reasons. One possibility is of course that they are lies designed to hide culpability. Another is that they are lies told for other reasons. Further possibilities include faulty recollection or confusion at times of stress or when the importance of accuracy is not fully appreciated, or there may be inaccuracy or mistake in the record-keeping or recollection of the person hearing and relaying the account. The possible effects of delay and repeated questioning upon memory should also be considered, as should the effect on one person of hearing accounts given by others. As memory fades, a desire to iron out wrinkles may not be unnatural – a process that might inelegantly be described as "story-creep" may occur without any necessary inference of bad faith".

65. Where the evidence of a child stands only as hearsay, the court weighing up that evidence has to take into account the fact that it was not subject to cross-examination (*Re W (Children)(Abuse: Oral Evidence)* [2010] 1 FLR 1485).

66. In a case that turns on what the children have said, some attempt should have been made for an experienced professional to investigate the allegations in a way that was forensic and properly recorded. As HHJ Wildblood QC sitting as a High Court Judge said in *D v B and Others (Flawed Sexual Abuse Enquiry)* [2007] 1 FLR 1295, "It is necessary to examine with particular care:

a) What the children have said
b) The circumstances in which they said it
c) The circumstances in which any alleged abuse might have occurred"

67. The general principles of the Achieving Best Evidence Guidelines should be adhered to. It is desirable that interviews with young children should be conducted as soon as possible after any allegations are made (*Re M (Minors)(Sexual Abuse: Evidence)* [1993] 1 FLR 822).

68. Where a child has been interviewed on a number of occasions the court may attach diminishing weight to what is said in the later interviews (*Re D (Child Abuse: Interviews)* [1998] 2 FLR 10).

69. The court will wish to see responses from the child which are neither forced nor led (*Re X (A Minor)(Child Abuse: Evidence)* [1989] 1 FLR 30).

70. Where there has been a failure to follow the interviewing guidelines, the court is not compelled to disregard altogether the evidence obtained in interview but may rely on it together with other independent material to form a conclusion (*Re B (Allegations of Sexual Abuse: Child's Evidence)* [2006] 2 FLR 1071).

71. In paragraph 79 of *Re W and F (Children)* [2015] EWCA Civ 1300, Baker J (as he then was) stated:

"The ABE guidance is detailed and complex. But those details and complexities are there for a reason. Experience has demonstrated that very great care is required when interviewing children about allegations of abuse. The Guidance has been formulated and refined over the years by those with particular expertise in the field, including specialists with a deep understanding of how children perceive, recall and articulate their experiences. It would be unrealistic to expect perfection in any investigation. But unless the courts require a high standard, miscarriages of justice will occur and the courts will reach unfair and wrong decisions with profound consequences for children and their families".

72. Where the court finds that no evidential weight can be attached to the interviews the court may only come to a conclusion that relies on the content of those interviews where it has comprehensively reviewed all of the other evidence (*TW v A City Council* [2011] 1 FLR 1597).

73. In *Re B (Allegation of Sexual Abuse: Child's Evidence)* [2006] EWCA Civ 773; [2006] 2 FLR 1071, (quoted by McFarlane LJ in Re J (A Child) [2014] EWCA Civ. 875), Hughes LJ stated:

"[34]…Painful past experience has taught that the greatest care needs to be taken if the risk of obtaining unreliable evidence is to be minimised. Children are often poor historians. They are likely to view interviewers as authority figures. Many are suggestible. Many more wish to please. They do not express themselves clearly or in adult terms, so that what they say can easily be misinterpreted if the listeners are not scrupulous to avoid jumping to conclusions. They may not have understood what was said or done to them in their presence.

"[35] For these and many other reasons it is of the first importance that the child be given the maximum opportunity to recall freely, uninhibited by questions, what they are able to say, and equally it is vital that a careful note is taken of what they say and also of any questions which are asked. All this and many other similar propositions, most of them simple common sense, are set out in nationally agreed guidelines entitled Achieving Best Evidence in Criminal Proceedings…'

"[40] There is no question of this evidence being inadmissible for failure to comply with the ABE guidelines, and that has not been suggested in argument for either parent. In a family case evidence of this kind falls to be assessed, however unsatisfactory its origin. To hold otherwise would be to invest the guidelines with the status of the law of evidence and would invite the question: which failures have the consequence of inadmissibility? Clearly some failures to follow the guidelines will reduce, but by no means eliminate, the value of the evidence. Others may reduce the value almost to vanishing point'.

"[42] ….The purpose of the ABE guidelines is not disciplinary: it is to present the court and for that matter the parents with the most reliable evidence which can be obtained. In every case the judge cannot avoid the task of weighing up the evidence, warts and all, and deciding whether it has any value or none. Everything will depend on the facts of the case".

74. Section 31(2) of the Children Act 1989 sets out the "threshold criteria" namely that:

"A court may only make a care order or supervision order if it is satisfied –

(a) That the child concerned is suffering, or is likely to suffer, significant harm; and

(b) That the harm of likelihood of harm, is attributable to-

(i) The care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) The child's being beyond parental control".

75. It is necessary to link the facts relied upon in threshold to *why* that justifies the conclusion that a child has suffered, or is at risk of suffering, significant harm of types X, Y, Z

76. The court must be careful to avoid "the temptation of social engineering". There is a need to recognise the inevitable diverse and unequal standards of parenting. (Per Hedley J in *Re L* [2007] 1 FLR 2050)

77. In *L-W Children* [2019] EWCA Civ 159; [2019] 2 FLR 278, King LJ made the following observations about findings of failure to protect:

"62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.

63. Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been wholly exonerated from having caused any physical injuries.

64. Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in Re J (A child) [2015] EWCA Civ 222, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm."

Evidence

78. This case has produced a substantial amount of documentary evidence. I have read the electronic bundle that totalled around 3,000 pages. I have viewed the ABE interviews. I have had the benefit of a number of expert reports.

79. In 2018 Dr Connor administered the Wechsler Nonverbal Scale of Ability, and the findings suggested that X, "*has considerable learning needs, with her overall performance being within the very low range for her age, (<1st percentile)*" [M178].

80. Both the report of her annual review and the latest version of the draft EHCP describe X as follows:

"X has a diagnosis of physical, emotional, social and behavioural disorders. She presents with a severe Specific speech and language disorder (now referred to as "Developmental Language Disorder") which profoundly affects her ability to access the curriculum, to communicate her thoughts and ideas successfully to others and to make progress in line with her underlying cognitive potential and a diagnosis of verbal dyspraxia. This co-exists with perceptual, motor and attention difficulties which profoundly impact upon her

learning and behaviour. There are also significant emotional and mental health needs which are severely affecting her learning.

"

81. Dr Halari, Chartered Consultant Clinical Psychologist has provided a series of reports in relation to her psychological assessment of the children X and Y and of the family.

82. In her report dated 13 May 2019, Dr Halari wrote that X and Y presented with '*significant learning needs…. These difficulties significantly impact on the children's ability to express their thoughts, emotions and worries*'.

83. It is clear from those reports that although X is 14 years old, her level of functioning renders her ability to understand and to communicate as limited.

84. Dr Bradley Mann, Consultant Clinical Psychologist provided an unchallenged psychological assessment of the parents dated 3.1.2019. I have already outlined in the essential background Dr Mann's main findings as to the parents' functioning. Dr Mann found that parents' cognitive assessments show flat profiles across all areas, with no particular areas of strength or weakness.

85. Melissa Patidar of Communicourt provided a report in relation to the father dated 23.5.2019. She made a very strong recommendation for the father to have an intermediary. She identified considerable difficulties for the father in the following areas: understanding and retaining verbal information, understanding low frequency vocabulary, processing any long sentences; understanding complex question types; seeking clarification; expressing himself and literacy. She made recommendations for ground rules that the court has followed to assist the father.

86. Amy Daly of Communicourt provided a report in relation to the intervener dated 17.12.2019 that recommended the use of an intermediary for the duration of the proceedings. She found that the intervener has marked communication difficulties that are masked by his ability to engage in everyday conversations and by his ability to use adaptive strategies to support his communication in day to day life. His communication profile is

characterised by impairment in the following: sustaining attention to verbal information, especially if it contains complex terms and concepts; retaining and recalling large chunks of verbally presented information; having limited auditory working memory capacity; restricting understanding of low frequency words and court specialised terminology; and limited understanding of figurative and non-literal language; sustaining attention to and understanding from written information. She made recommendations for ground rules that the court has followed.

87. Dr Adam Campbell, consultant clinical psychologist provided a cognitive assessment on theintervener dated 23.1.2020. He found that the intervener's intellectual functioning is well above the threshold for learning disabilities but that the intervener was of mixed ability, as his memory was borderline, i.e. "quite close to poor" and his estimated reading age was 12 years and 6 months. He supported the use of an intermediary.

88. Triangle provided a report dated January 2020 summarising their involvement with X and Y.

89. In the course of the proceedings I have also received parenting assessments of the parents from Kellie Potter, ISW and latterly from Ward Andrews. However, those have not featured in this fact-finding hearing.

The witnesses

90. The witnesses and my impressions of them were as follows:

91. **Social Worker A**, the current social worker was allocated to X and Y's case in December 2019. She had also been the social worker for Z for a period in 2017, ceasing in December 2017. During that work, Social Worker A had sought to encourage the relationship between Z and her father, the intervener.

92. In *Re E (Care Proceedings: Social Work Practice)* [2000] 2 FLR 254 FD, Bracewell J identified the need for local authorities to keep up-to-date chronologies as the top document

on any case file. This case has fallen foul of that guidance. The history of this family is long and multi-faceted with multiple children subject of social services' involvement. In this case the process of cross-referencing information about the many vulnerable children within the family group appears to have been overlooked. This failure has been exacerbated by the hand-over from paper files to computer systems which contributed to the difficulties. The result was that when Social Worker A read into the files relating to Z, she remained unaware of much of the background history including some of the previous sexual abuse allegations made against the intervener nor was she aware of previous written agreements that required that the intervener not be allowed to share a bed with or left unsupervised with his younger siblings.

93. Social Worker A was in the uncomfortable position that the large amount of disclosure of social services records subsequently revealed information that should have been known to her as Z's social worker but which she was unaware of at the time. Clearly that was a matter of deep regret for Social Worker A. At the time in 2017 she was aware of the issues relating to the intervener's mental health issues and his alcohol misuse but not of the previous sexual abuse allegations against him.

94. I do not think it would be fair to say the buck should stop with Social Worker A. She inherited a case that had already been worked on for a year and no mention was made in the documents prepared during that time of any sexual risk from the intervener. She could have spent longer searching through the case files and learning everything she could about the family. She could have had more fruitful discussions with her colleague who was the social worker for X and Y at the time. However, I do not ignore the pressures on social workers with heavy case-loads and statutory obligations to meet. In this case, obtaining the relevant social services documents for disclosure proved to be a difficult and very drawn out process. The reality is that Social Worker A was the social worker in position when the music stopped which on the face of it may reflect badly on her, but the failing was a systemic and long-term failing by the local authority.

95. Part of the parents' case about Z is that the mother was told by Social Worker A to "butt out" in relation to mother's involvement with the intervener spending time with Z. This was entirely denied by Social Worker A.

96. Notwithstanding the obvious professional discomfort of the position Social Worker A was in, I found her to be an honest and helpful witness. I formed the impression that she was a reliable and consistent witness who I found to be balanced in her evidence.

97. **Social Worker B** was the social worker allocated until December 2019, before Social Worker A. He was the social worker during most of the proceedings and throughout the time of the girls move to the residential unit and the police investigation into X's allegations.

98. Social Worker B gave evidence in relation to the mother's initial reaction to the allegations that the intervener had abused Z – he was clear that the mother entirely denied that it was possible.

99. Generally, I found Social Worker B to be a fair, balanced and reliable witness. He demonstrated thoughtfulness and consideration about this case.

100. FSW was a Family Support Worker who worked with the family prior and after the removal of X and Y from the parents' care. I found FSW to be a fair and reliable witness. During her evidence she produced a case note dated November 2019 containing an account of X being keen to speak privately to her and a new member of staff. X then retracted a previous allegation relating to pen lids being inserted into her vagina against one staff member at the residential unit, LE and instead made the same allegation against another staff member, EF; which she acted out with a doll, later she said "100 pen lids in me".

101. FSW appeared reliable, she gave straightforward evidence which I accepted.

102. **Social Worker C** had been the social worker prior to Social Worker B and ceased to be involved before the children were removed from home. She has now left the local authority. She previously gave evidence before me last July. Her evidence was helpful because she was able to describe her interactions with the family members during the time when the girls were still at home and in particular of their reactions when issues arose within the family.

103. I found Social Worker C to be a balanced and reliable witness and her note keeping was effective. She recognised the limits of her recollection and said when she could not remember something, but generally was able to identify the answer from her statement or notes.

104. **DC A** was the officer who conducted the ABE interviews of X. She is experienced and has conducted around 100 ABE interviews. I have had the benefit of watching and reading the transcripts of those interviews. DC A generally conducted a difficult series of interviews well and in accordance with ABE guidelines. There was exploration under cross-examination as to what occurred outside of the interview suite during the many breaks, but I am satisfied that those were appropriate and necessary breaks sought by X and I am satisfied that there was no inappropriate pressure or interference with X's account during those periods.

105. I found DC A to be a fair and balanced witness, for example, she was prepared to acknowledge freely those aspects of the case that undermine X's account.

106. **DC B** was the officer in the case in respect of the investigation into the intervener. He was able to provide useful information surrounding the investigation and his observations. I found him to be a reliable witness.

107. **MM** is a director of an organisation which has been providing weekly therapeutic support to X and Y since Summer 2019 and provided a final report in January 2020. MM was clear in her evidence that the organisation had been very mindful of the allegations and resultant investigations so they had very specifically restricted work to the topic of feelings, gaining trust, doing very simple work about keeping safe and producing a book for the children.

108. I formed the impression that MM was careful and considered in her interactions with the children and there was nothing in her evidence that gave me cause to believe that the work with this organisation had in some way interfered with or undermined X's accounts.

109. **EF** is a senior residential support worker at the residential unit. She had worked there since November 2018, just shortly after the girls were placed there. EF was an impressive

witness. Despite the serious challenges posed by caring for the girls and despite being the subject of unfounded allegations from the girls that caused her to be suspended pending investigation, EF remained committed to caring for them. She appeared to have a philosophical approach to these experiences and stated that the girls' challenging behaviour was just part of the process and a way for the girls to express their emotions. EF impressed me with her patience and understanding. It was not surprising to learn that although she is not X's allocated key worker, that X has gravitated towards EF.

110. EF drew a distinction that most of the time when X made allegations about staff she did so when she was heightened, whereas the allegations against the intervener were made when she was calm and contained.

111. I found EF to be a reliable witness who is dedicated to the welfare of X and Y. She appeared to be neutral about the wider issues in the case and I am satisfied that she has accurately reported her accounts of events to the best of her ability.

112. **LL** is the manager of the residential unit. She recognised, in the light of her experience having given evidence last summer in this case, that the reporting forms used by the staff were unhelpfully titled. As a result she had fed back to her managers and the system had been changed to remove the misleading references to "disclosure" and instead the recording is carried out on "Allegation" forms. She explained the way in which the home has been obliged to triage the allegations made by the children, as agreed by the LADO because of the quantity of allegations being made by the children.

113. She was frank about the girls, particularly Y, attempting to eavesdrop on the staff and described Y lying down outside the office door. LL made a slightly different observation about the pattern of allegations – that X would be heightened, make an allegation against a member of staff, and then after being calm for a couple of days would make an allegation about a family member. That observation seemed to be rooted in an earlier period of time and, for example, the allegations X made against the mother and Y did not appear to fit with it.

114. LL spoke with great fondness about the girls and in her evidence appeared to be fair and child-focussed. I was more cautious about her evidence when it came to the structure

of how the residential unit operates. In particular I am not convinced that every aspect of procedure is always put into effect as well as she told me. For example the evidence of NF caused me to doubt the efficacy of the hand-over regime in place.

115. **LE** is the deputy manager at the residential unit. He has been in that role for 3½ years, although there was a gap after October 2018 when he was caring for his mother, returning in March 2019 although he did some occasional work at the house during December.

116. LE gave evidence that he recollected X saying the second part of EF's note of July 2019 (he had been out of the room for the first part), when X said the intervener sexually abused her when her mother was in hospital and her father was asleep. He said that she was upset when she said this, speaking softly, teary-eyed or welling up. Then he said X became very upset and said to staff, "please me wanna speak to Social Worker A and let it all out". LE described his shock at what he was being told, but that he needed to remain professional and make sure he was child focussed.

117. LE said that whenever she mentioned the intervener, X would become upset. He did not have a lot of knowledge of the background allegations, but was aware that X had, "probably been sexually abused by her brother".

118. LE was the subject of a sexual allegation by X. He knew of the allegation because he was not allowed to work at the house while it was investigated.

119. He was clear about not asking leading questions to the children which he described as unprofessional and that talking about any abuse was something that should be left to the therapists. He also described a pattern similar to LL of X, "telling lies about professionals", then a few days later "offloading and telling staff about situations".

120. He agreed that telling X she was brave after she made an allegation was the sort of thing he might do.

121. I found LE to be an honest and straightforward witness. He was willing to accept without hesitation points which might have been deemed to be critical of his practice.

122. **BX** was another member of the staff team at the residential unit. He was present for the early part of what X said to EF in July 2019. He had quite a different impression to LE of the way X gave her account. He thought that X was "very factual" and "very straight-faced" at the time. That difference might be explicable by them witnessing different parts of the account. BX drew a distinction that X would make allegations against staff and then a day or so after would smile or laugh about it. He said that did not happen when she makes allegations about the intervener.

123. I deal later in this judgment with BX's statement and his case note for Christmas Day. For the reasons I explain, I am satisfied that his note keeping and his court statement were prepared with insufficient care. As a result I must be more careful with the weight I can attach to his evidence, although in a number of the relevant episodes he was not the only witness present at the time.

124. **NF** is an agency support care worker who worked three 24-hour shifts at the residential unit. His experience of hand overs at the residential unit did not reflect the practice that the managers of the home had described of time spent reading into the files before dealing with the children. He said when he started he spoke to LL and was introduced to the children but was not given any information about the concerns relating to the children and did not read anything further.

125. On NF's second shift, in October 2019, X told him about her brother the intervener, that he had sexually abused her and pointed to her genitals. This had been said while they were on a walk around the block of houses near the unit, with EF and Y also present. He said that X did not seem particularly distressed but was having a hard time to put it into words. In the note of the incident, NF wrote that X had said she got angry and had held up her middle finger to the intervener and then had enacted the intervener punching her in the left eye. NF said he thanked X for telling him and that he would have to put it in a report. He said he wrote it down on a piece of paper when he got back to the office about five minutes later. That piece of paper has never been produced but he said he typed it onto a freestanding document on the computer later. He confirmed what he wrote was later transposed onto a "Disclosure and Cause for Concern Form" dated October 19 that was completed by LL. It was X's allegation to NF that led to the second ABE interview taking place.

126. Under cross-examination NF said his impression on his third and final shift on 5th November 2019 was that X was attention seeking because she was jealous of her sister getting attention.

127. NF's oral evidence was consistent with the written account that had been transposed from his note. I found NF to be a reliable and consistent witness and I accepted his evidence. An important feature of his evidence is that had no knowledge about any of the allegations against the intervener or the history. This meant that his account could not have been influenced by any prior knowledge or preconceptions, nor suffer from any confirmation bias about what X was telling him.

128. **The Children's Guardian** gave evidence that in the course of her preparation of the Re W report X said the intervener "put pen lids in me". I accept the Guardian's evidence about this conversation.

129. **PO** is the intermediary who was present for X's first two ABE interviews. She gave evidence about her methodology and her approach to the interviews. She struck me in her evidence and in my observation of her work during to the ABE interview to be a skilful, sensitive and effective intermediary. She was careful in her evidence not to overstep her professional expertise. I accepted her evidence.

130. **The intervener's** evidence was separated by the adjournment. He commenced his evidence, having been produced from prison on 13th March 2020 and resumed it by video link on 6th April 2020.

131. The intervener had the benefit of an intermediary throughout the hearing. During the March part of the hearing it was Owais Shah. Unfortunately due to COVID-19, Communicourt had to furlough Mr Shah and a senior member of staff, Sarah Waterton, supported the intervener instead for the remainder of the hearing in April.

132. I deal with the intervener's evidence in more detail later in this judgment. However, in summary I found him to be an unreliable witness. He was highly evasive – for example when asked how he recorded the rape of Z, he facetiously replied, "Did I record it?". He

was inconsistent - he accepted during the first part of his evidence sending a message saying he had raped his sister but claimed it was "just chat", but after the long adjournment he claimed to not remember typing it at all. Many elements of his account appeared to be completely implausible. He claimed on many occasions to lack any recollection of key events or to be unable to provide any detail to his accounts, "I don't recall" was his stock answer. His difficulties with recollection were not equally spread but instead arose when he was facing a difficult question or a piece of evidence that was either damning to his own case or his parents' case. For example, he accepted he sent a message to Z's mother on 28th April asking whether Z had been sexually assaulted but then claimed he could not recall why he had sent such a message. I formed the view he was approaching his evidence in a tactical way with the aim to improve his case or support his parents' case. He appeared to me to be a dishonest and self-serving witness. At times he appeared to be treating the process as a game and gave the impression of cockiness, putting his feet up on the desk on a number of occasions.

133. **The mother** gave her evidence over a video link from her lawyer's offices. Her evidence was spread across three days. Although there was a bundle available it was planned by the advocates to read out passages from the evidence rather than invite her to look at documents in the bundle.

134. I did not doubt the mother's love for her children and her genuine wish to care for them.

135. When she was questioned about her discussion with Dr Halari about the intervener's purchasing of nappies and baby paraphernalia, in the course of her answers, the mother's narrative shifted. She suggested that what she told Dr Halari was based on something someone had told her, rather than her own experience. She was not sure, but thought that person could have been Z's mother. But she had not told Dr Halari about this because she, "didn't want to bring anyone else into it". I am aware that the mother has not held back in criticising Z's mother to professionals in the past and to the court so it made little sense that she would have sought to protect her in a discussion with Dr Halari. I formed the strong impression that the mother was making up this part of her evidence as she went along.

136. Under questioning on behalf of the Guardian, the mother surprisingly told the court that she had thought that TK had a sexual interest in children from about one week after

first meeting her in 2016. She based this on TK's unhealthy insistence in asking about Z and saying how she was going to be Z's mum. This was not a view that the mother had shared with professionals at the time. Nonetheless she allowed TK to stay overnight in her home on a number of occasions. If the mother genuinely believed since 2016 that TK had a sexual interest in children that would have been a gross failure to protect. However, in my judgment it is likely that she was revising her view of TK in the light of what has become known in the case. However, that sort of revisionism was only applied when it came to shifting blame away from members of the family and onto third parties; whereas the mother was defiant for example when she was asked whether she had reconsidered any of the previous allegations against the intervener in the light of his recent convictions.

137. When asked about how X was able to give a description of the intervener's abuse of Z, the mother suggested this was something X had overheard and suggested the workers at the residential unit are not very secretive. She appeared quite indignant about this.

138. The mother initially appeared to me to be quite close-minded about the possibility that the intervener could have abused X. Later in her evidence, after a lengthy pause, she accepted that there could be a possibility that happened and shrugged, but said she does not know and that the children were always with her. Under questioning from Mr Shaw, the mother accepted that the intervener could have had the opportunity to sexually abuse X. This was a significant shift from her responses with professionals, her written evidence and her earlier accounts to the court which had ruled out the possibility of abuse on the basis that X and Y had always been with her.

139. I note that in her evidence, notwithstanding her condemnation of the offences for which the intervener was convicted; ultimately the mother adopted many of the exculpatory views that the intervener had put forward – for example that Z's mother bears responsibility for the intervener's abuse of Z. Similarly, although the mother accepted that the intervener is a paedophile, when asked about the influence of TK, she seemed to be open to the intervener's claims that TK caused the abuse to occur and by the end of her evidence she said she thought they were, "both in it together, but a little bit of TK".

140. I have to treat the mother's evidence with care. I was throughout mindful of her cognitive assessment by Dr Mann and the potential impact of her levels of functioning on

what she said. In addition, her evidence was spread over a number of days which must have been tiring for her (albeit only the middle one was a full day). Although she expressed a positive attitude about giving evidence, I suspect this may have been more to do with not wanting to displease the court. In relation to the cross-examination of the mother, I recognise that some of the questions put to the mother were overly long and unhelpful. I have factored in that the answers to those sorts of questions may have been unreliable. In relation to her recollection of past events and in particular previous allegations: for a person with the mother's level of cognitive functioning it would be unreasonable and unrealistic to draw any inferences from any confusion or difficulties with recollection that she may have and I do not do so.

141. In addition, I have factored in the impact on the mother of giving her evidence by video-link. This may have created difficulties for her because of the unfamiliarity of the technology, the physical distance and sense of disconnection from the proceedings that may have arisen. It appears likely to have created an additional source of stress for the mother.

142. Those considerations mean that I have to be careful about what I draw from the mother's evidence. I place no weight on confusion between incidents or difficulties with dates. Those sorts of difficulties were inevitable given her cognitive profile.

143. However, even when I factored in those considerations, ultimately I found the mother's evidence to be unreliable. On occasions what she said in evidence was directly contradicted by what she was reported to have said to professionals previously – for example her account to Dr Halari about the intervener's past behaviour suggested she had greater knowledge than she purported to the court. In addition, there were aspects of her evidence when she made claims that I simple found to be implausible.

144. **The children's sister** was also video linked from the lawyer's offices. She has lived in the family home continuously and is cognitively the highest functioning of all the family members. Unfortunately, I can place little weight on her evidence that she had babysat the girls when the mother would go out because this was said in response to a clumsy question that was extremely leading.

145. The children's sister's statement address some of the points that were raised in a pre-birth assessment dated October 2019 in relation to her unborn child. In the course of that assessment, she made allegations of having been sexually abused as a 5 or 6 years old child by her 17/18 year old sister's middle-aged boyfriend, QM. In her statement and oral evidence she denied having ever made those allegations. She claimed that the social worker was lying about things and mixing up different allegations. However, in her statement responding to this she elected to provide information about QM giving a love bite to her older sister in their garden when she was 12/13 years old.

146. The children's sister denied it was possible for the intervener to sexually abuse X or Z because there was "never a time it could have happened" and in respect of X, "he was never left alone with her, she was always with my mum. There was never a time they were left alone".

147. In answer to questions from Mr Shaw, the children's sister made clear her opinion that X and Y should be returned to their parents' care, and that they are being harmed and mistreated by staff at the residential unit.

148. I found the chidren's sister's evidence to be coloured by her obvious loyalty to her parents. In my judgment she was tailoring her evidence to minimise her parents' exposure to any negative findings that might undermine their common goal of having X and Y returned home. I found I could place little weight on her assertion that there was no opportunity for Z and X to be sexually abused by the intervener given that he pleaded guilty to raping Z in the family home and there was photographic evidence of that offence. Overall, I found her to be a witness on whom I could place little reliance.

149. **The father** was the final witness. His evidence had not been commenced in the four days that were originally set aside for the resumed hearing. This meant that he had the benefit of a 5-day break (due to the long Easter weekend) before he gave evidence. I had previously observed his tendency to tire through the court week and so it was probably of benefit that he was able to give evidence fresh, although that has to be balanced against his memory deficits.

150. Unfortunately, there were some technical difficulties with the broadband connection in the household. This was overcome by closing the mother's separate zoom link into the hearing. So the father gave evidence with the mother sitting next to him. I gave them a clear warning about not communicating during the evidence and I observed carefully over the video link. I saw nothing that gave rise to any concern that the mother could have been influencing the father's evidence as he gave it.

151. The father 's evidence was completed in one day, with multiple breaks taken. The afternoon session was slightly delayed because of the intervener's refusal to come out of his cell. At the very end of his evidence, the intermediary indicated that the father was finding it very hard and raised concerns about the court continuing into a further session that day. It was indicated that the questioning would be finished within a few minutes and it was agreed to continue. With hindsight the intermediary was correct because in the short exchange that followed I had, for the first time during his evidence, serious doubts as to whether the father was following the questions. In any event those remaining few questions were of no significance and the father 's evidence was completed moments later.

152. The ground rules for the father's evidence were different, so there were ten-minute breaks taken every twenty minutes and he had the opportunity for assistance from the intermediary over a private zoom link during those breaks.

153. The father 's cognitive issues were plainly apparent during his evidence. However, the broad impression I had was that he was understanding the questions and giving meaningful answers. The questioning of the father was in any event kept relatively short.

154. There were times when the father indicated he could not remember the events that he was being asked about. However, I did not detect any pattern as to when this occurred and I formed the view that these were genuine failures of memory, similarly he evidently struggled with the chronology of events and dates.

155. The father was asked about FSW's evidence that he had told her about the intervener having boxes of nappies delivered to the home. He denied having said that. He remembered the day and told me about taking FSW up to the intervener's room and unlocking it but the workers said they could not go in there (because of the smell). He told

me as they left, a parcel for the intervener arrived and he had jokingly said that was probably more nappies. He told me this was because he had seen nappies in the room. I formed the impression that in this part of his evidence he was trying to cover up his previous comments to FSW.

156. The father explained the parents' distrust of the intervener around the children as being because of his attitude, and that he could be a "Jekyll and Hyde" – "one minute good then a few drinks and he would just turn."

157. The father's evidence is difficult to assess because of his cognitive issues. It was clear that there are serious gaps in his memory. The main tenor of his evidence was that he fell into line with what the mother had said, particularly in relation to the overall allegations – he did not accept that the intervener could have abused X; he placed blame on the school for the girls' sexualised behaviour because they had been put in the same room. However, there were times when what he said contradicted the mother's evidence, particularly on the details. For example, although he maintained that the girls were never left alone, he also contradicted the mother when he said that the X and Y would play in their bedroom and that Z would go up and down the stairs to "show Nanny her toys". His evidence on this point was quite compelling as he described her sliding down the stairs "on her bum."

158. Overall I was not satisfied that the father was a reliable witness. His evidence was broadly in line with the mother's, including on those aspects where I was not satisfied with her evidence. I formed the impression that within the functioning of the family, despite that fact that the father enjoys doing some of the cooking, matters revolve around the mother. The father's role within the family is essentially passive and hands-off. Historically, this may have been because he was at work as a cook, more recently he has mostly remained downstairs in the living room limited by his health problems.

The ABE interviews

159. X has undergone three ABE interviews. The first took place in September2019 and lasted around 50 minutes. It was conducted by DC A, supported by a registered intermediary PO. The interview is very different in its early stages compared to the latter stages. During the initial twenty minutes, X is at times distractible and her interest is

certainly engaged by the dolls and the doll's house that had been brought into the room. However, she appears generally to be answering the questions. In the second half of the interview, there is a marked reduction in X's engagement with the interview.

160. X successfully identifies the difference between truth and lies. The officer sought to take the discussion to the intervener at an early stage. However, that elicited no direct response. X at that stage was preoccupied with arranging the dolls. Later she identified one of the dolls to be her brother the intervener. X then says, "Erm, throw me in the bin." An attempt to clarify the point further was side-lined by X's focus then being on locating stairs within the doll's house. X seemed to be trying to put the dolls she earlier identified to be herself and the intervener into the upstairs portion of the doll's house.

161. [A description of the contents of the 1st ABE interview is provided.]

162. In my judgment the first interview was generally conducted well in difficult circumstances. X's speech and cognitive issues plainly made it difficult at times to understand her fully. The allegations she made against the intervener in the interview were spontaneous and unled. She appeared to struggle with ages – initially she could not say what her current age is, before she then stated it correctly. She was inconsistent when she claimed to have been abused at one then at two years old. Either way that appears to be implausible. Although her recollection of chronological ages may be problematic, X's claim to have been wearing a nappy at the time may not be so implausible because she was able to remember and discussed having progressed onto wearing knickers which may have been later than typical in her case.

163. The non-verbal communication in the first interview is important. Issues about X's understanding of the term "shagged" recede when her verbal account is put alongside her actions placing the dolls in sexual positions, pulling the X doll's legs wide apart a number of times and at one point thrusting the intervener doll backwards and forwards. Her identification of the location of genitalia is also consistent with her allegations.

164. The part of the interview in relation to the bath needs consideration. The bath toy was provided seemingly to contribute to her play with the doll's house while the intermediary was obtaining the gingerbread figures. However, when X saw the bath she seized it and

immediately incorporated it into her account about the intervener. Using the X doll and the intervener doll, she acted out her account of being pushed under the water by the intervener. It was a spontaneous and unled allegation. The officer did not pursue or enquire further into what she said although later in the interview the officer said, "I know I distracted you with the bath, but if we go back to what we were saying." The local authority is not seeking any finding in relation to the intervener pushing X under the water. I have to factor in whether this part of X's account is pure fiction and, if so, what that means about her allegations generally.

165. X's descriptions about pen lids will be the subject of greater discussion later in this judgment. In the first interview, her account appears to be mostly cogent about the intervener having put a pen lids or lids in her. She is inconsistent about the number of lids. She appears to be quite specific about the type and colour of the lid, although there has to be a suspicion that she was simply selecting from the pens that she had seen on the day of the interview. when she used the dolls, she was quite emphatic with her actions, poking her finger up towards the dolls genitals to demonstrate what she was saying.

166. The interview barely touched on Z. At the end, when X's engagement in the process was heavily reduced the officer clumsily led on the issue. X's answer did not follow this lead and instead reflected the other evidence I have heard from the mother and the children's sister about the intervener being intolerant about the younger children disturbing him in his room, "when go in room say no [Z]".

167. X's second ABE interview was conducted in November 2019 (although the transcript wrongly states 11th November). It was also at the police station and with the same officer and intermediary present. However, I am aware that due to staff shortages at the residential unit, X travelled to the interview with Y and Y was present in the building during the interview.

168. [A description of the contents of the 2nd ABE interview is provided.]

169. X's second interview contains almost no material in support of the allegations against the intervener. Only at the end of a series of repeated questions did X make the bare

allegation that the intervener put a pen lid in her. Otherwise, her account about the intervener is limited to hair pulling and being mean.

170. X's allegations against NF are important for a number of reasons. No party seeks to prove the truth of any allegation against NF. The local authority's case is that this allegation is not true. When X makes the allegation about NF, she did so spontaneously. X provided limited detail about the allegation and was inconsistent about where it took place – on the walk or in the bedroom. X's account appeared on the face of it to be implausible – that on a walk, with Y and another member of staff ahead, NF pushed her to the ground and put a pen lid in her. X's level of engagement in this interview was markedly less than during the first interview. She appeared to be very aware of the cameras and may have been distracted by the presence of her sister Y and the social worker.

171. The third ABE interview took place in December 2019. The circumstances of this interview were very different. The location was at the residential unit (contrary to what was recorded on the ABE transcript) in an area away from the main house called the "snug". The same police officer conducted the questioning. Also present in the room was the officer in the case who operated some mobile recording equipment that was set up on a table in the room. The intermediary was not present. A member of staff from the residential unit, EF, was also present.

172. [A description of the contents of the 3rd ABE interview is provided.]

173. While the second officer goes to find EF, X sat up and noticed the cameras asking, "Why cameras on?". EF came back in and X wanted to play more hangman instead of talking. After a lengthy period playing hangman, the officer brought up the issue of the intervener again. X physically closed down at this point – lying on her side, she hid her face into the cushion, then placed the cushion over her head entirely. She became entirely inaudible. Even EF was unable to encourage X to sit up to talk, although she was willing to give EF the cushion from over her head. X then requested to go to A and E.

174. [Further details from the 3rd ABE interview are provided.]

175. In this interview, X was plainly reluctant to talk. Having watched the videos on a number of occasions, it is apparent to me that X became increasingly reluctant to talk about the allegations. By the third interview, she physically turned in on herself and hid when gently prompted to talk about the intervener.

176. The allegations against the intervener in the third interview are prompted by the discussion about body parts and being touched on different parts. When she is asked whether anyone has touched her Minnie (the word she used seemed to change over time, but she confirmed it was the part to wee from), she identified the intervener as having done so. She provided a little detail when she spoke about the intervener pulling her knickers down. There was some suggestion in the course of the hearing about whether the doll had caused X to allege her legs being spread. However, that was said in an earlier interview. In any event, I have seen the doll used in this interview, and the legs lie straight when it lies down and splay apart if it is sat up. I am not satisfied that X's allegation of having her knickers pulled down was influenced by the doll.

177. The content of X's allegations of a bottle being thrown at her Minnie and of a ring being put in her Minnie appear to be outlandish and there is a lack of detail about what she is talking about.

178. When I consider all three of the ABE interviews, they provide a mixed picture. At times, particularly in the first part of the first interview, X appears to be making quite cogent allegations with a reasonable amount of detail. In particular her physical actions with the doll figures and gingerbread cut outs are quite compelling. However, there are inconsistencies and difficulties in understanding what she is saying at times. Her second interview undermines her credibility – she made unfounded allegations about NF which are similar to the earlier allegation against the intervener about pen lids. The third interview adds little. X's manifest reluctance to talk meant very little detail was provided. On one view, her allegation of the intervener touching her Minnie and pulling her knickers down is consistent with the allegations in her first interview. However, she did not repeat the allegations of the intervener having "shagged" her nor did she repeat the pen lids allegation against him. The new allegations she makes in this interview of throwing a bottle at her Minnie and putting a ring in her are not pursued by the local authority.

179. The intervener's position is that X's interviews raise a number of questions that the intervener has not been able to put to X due to my refusal to order a further intermediary-led interview of X. There are a number of areas where a challenge by way of further questions could have been put. However, I refused to allow a fourth interview of X and have given a written judgment explaining my reasons. In short, having seen the way that X's engagement with the process deteriorated over time, I had very little confidence that anything useful would be obtained by a further interview and a high degree of concern that the process would be disruptive and harmful to her.

180. Overall, X's ABE interviews give some support for the allegations that the local authority seeks to prove. X's account in the first part of the first interview is quite cogent and persuasive. However the inconsistencies and the false allegation against NF mean that if the case relied on the ABE interviews alone, they would be insufficient to discharge the burden of proof. Nonetheless they remain part of the overall picture to be taken into account.

X's other allegations

208. I have received a schedule of allegations made by X and Y dated 27th February 2020. I do not propose to list fully the details of all 25 pages in this judgment, however, [a precis of the relevant allegations is set out]

it summarises that the children have made allegations against other children, each other and professionals of sexual abuse and physical abuse.

209. This series of allegations from X pose a number of difficulties in terms of evaluating her evidence. It is plain that at times X threatens to tell lies about staff members. On a substantial number of occasions, she does so after having made such a threat, and/or she later retracts.

210. The sort of allegations X makes are of a range of different types, of being physically and sexually harmed. There are a number of occasions when she made allegations of sexual impropriety involving others, particularly staff members. She has also made a number of

allegations of objects, pen lids and a bottle, being put into her vagina. This is similar to the sorts of allegations she makes against the intervener.

211. There appears to be a pattern of X making allegations against staff at times when she is heightened or upset. She also appears at times to be intentional lying about staff with the stated objective of getting to go home – it is perhaps noteworthy that she wanted the social worker in the interview room before she made her allegations about NF during the second ABE. In relation to allegations against staff I cannot discount the potential in relation to alleged physical harm that X may have been in some way hurt, not least because part of her care package includes the use of physical restraint by the staff in accordance with the Deprivation of Liberty Order that is in place.

212. It is established that on some occasions X's allegations were plainly untrue. This has to be factored into my evaluation of the allegations about the intervener. However, I remind myself of the Lucas direction and in particular that because a person may lie about one issue, does not mean that they are lying about another.

213. The local authority relies on the fact that X has never retracted her allegations against the intervener. I accept that is the case, although I detect some wavering in X – at the second ABE interview she did not substantiate her recent allegation about the intervener.

214. X's allegations about the abuse of Z requires some extra consideration. The details that she gives in that allegation are corroborated by the known facts about that abuse. That begs the question as to how X came to give an accurate account about that abuse.

215. The parents have not told the girls about the intervener's offending and they maintained in evidence that they did not know the details of the intervener's offences until after he was sentenced in 2020. If that is correct, it rules them out as the source of what X spoke about in May and twice in December 2019.

216. I have heard evidence about the tendency of both X and Y to listen at doorways and try to listen in to staff conversations at residential home. There is the potential for X or Y to have overheard something being said about the intervener's offending and to have repeated what was heard.

217. I have heard evidence from the staff members at the residential home. There was no member of staff who knew about the details of the intervener's offences against Z in December. In her evidence EF told me (on 6th March 2020) that the intervener was in prison for oral rape of his daughter, and she had known about it for only a couple of weeks because she had been on holiday and she clarified she only became aware of it during 2020. She had not spoken to other staff members about it and had not heard anyone else speak of it.

218. LL the manager of the residential unit when asked about the details of the intervener's offence said she could not remember what Social Worker B or any email from him said. She told me that when DC B attended for the third ABE interview in December 2019 he told her that the accusation of the intervener sexually abusing Z was being investigated and they wanted to see whether there was information from X about it. She could not remember any details about the allegations involving the intervener and Z.

219. LL's evidence opens up a small window of opportunity for information to have been shared within the residential unit and in some way eavesdropped or learnt by X. There is no evidence that the detail of an oral rape was shared at that point at the residential unit, but I cannot rule it out as a possibility. However, if that sharing of information was the source of X's knowledge, it does not explain her comments she made in May and earlier in December about the intervener's behaviour with Z.

220. Social Worker B told me he had a conversation with the manager LL about images of children being found in the intervener's possession and at some stage he shared with her by email the possibility that the pictures may be a child within the family. Although it was requested, that email has never been produced. Similarly, Social Worker B told me he had made a note on his phone and emailed it to himself in respect of what X said in May 2019 about Z, but that has never been produced despite requests. In the mother's closing submissions, the point is made that Social Worker B had already formed the view that the girls were at risk from paedophiles and so his reported observations of what X was saying and how she said it could have been coloured by that preconception. I acknowledge that risk may exist, but on balance I accept Social Worker B's account about this allegation as set out in the case note he created at 9.16am on 10th May 2019 and potentially edited up

until 12th May at 8.32pm. While not strictly a contemporaneous note, I accept that was a note prepared shortly after the conversation with X. I found him to be professional and I accept that his recording was accurate.

221. The evidence of BX from the residential unit dealt with his statement and the note of what was said by X in December 2019. The handwritten note he prepared has never been produced. There is an inconsistency between his statement and the case note at [C275] made by him. The statement dated 13.2.2020 is extremely brief and records BX's account that X said she had seen the intervener with Z and that she had "seen his willy". The key worker session note recorded by BX at 8.30pm provides a great deal more detail as to what X had said, "my mum look after me well but things not safe there because of my brother" [Further details are set out of the contents of BX's recording in which initials were used.]

222. Under cross-examination it was made clear that BX in his account had used his own shorthand inserting initials instead of full names despite his use of quotation marks around those passages. In addition, he accepted when he wrote that "X said… she had reflected on her past", those were not X's words but his view of what she had said. It was plainly established that there was a looseness in BX's reporting and his statement for the court.

223. I have seen the case note for that day which is recorded by EF and approved by LL. EF had been taking the lead in the conversation with X on that day. The "Disclosure and cause for concern form" records what X said. It is an account that is consistent with BX's key work session note.

224. On the basis of the evidence of EF and BX, I am satisfied that X did say during her session with them the words recorded in EF's note. The recording was made soon after the session, it is corroborated by BX's recording and also by the EDT referral that was made as a result. I found EF to be an honest witness and someone whose loyalty is to the children rather than having any axe to grind against members of the wider family or the intervener.

225. When I put together all the evidence I have read and heard about X's allegations of the intervener having "put his willy in Z face", in combination with the fact of his conviction; I am satisfied on the balance of probabilities that X was speaking from a position of personal experience. In this I am supported by the detail she provided of a willy in the face

which is unlikely to have been obtained from other sources. I am also persuaded by X's account of having been scared at the time, which suggests her own reaction at the time, and has the ring of truth about it. In my judgment, X does not appear to be the sort of sophisticated story-teller who could embellish that sort of emotional context into a story if it were not true.

The intervener

226. In November 2019 the intervener pleaded guilty to six counts relating to the possession, making and distributing of child pornography as well as one count of rape of a child.

227.

The sentencing judge's sentencing remarks in February 2020 set out that a number of sexual images of young children, including category a, were found on the intervener's electronic devices, as well as evidence of the exchange of images and "utterly disgusting conversation" with others. Images were found on the intervener's partner's phone of the oral rape and other sexual activity by the intervener with the intervener's daughter and was satisfied that this was prolonged abuse of a child. The sentencing judge was satisfied that the intervener has an entrenched and deeply ingrained sexual depravity in relation to very young children and that
the intervener appeared to pass the blame on to his partner.

228. The sentencing judge, having given full credit for the guilty plea, imposed a sentence of 21 years, made up of 16 years imprisonment with an extended licence period of 5 years. Two thirds of the sentence must be completed before the intervener is eligible for parole.

229. It was in that context that the intervener gave his evidence to this court accepting his guilt for his criminal offences but denying that he is a paedophile. During his evidence, he repeatedly avoided responsibility for his offending. Instead he suggested that , his former partner had caused him to commit the offences he did. He would have the court believe that he had no paedophilic tendencies but that he simply went along with what his partner wanted because he did not want to upset her. I have factored in the evidence of the intervener's cognitive issues, his history of misuse of alcohol and depression. Those no

doubt led him to be in some ways vulnerable. The issue is whether they rendered him so vulnerable that he could be prevailed upon to rape his daughter.

230. The simple idea that a father, with no paedophilic interest would sexually abuse his three-year old daughter at the behest of another is far-fetched. The idea that the intervener, a heavily-built adult man was controlled by his partner, a disabled and physically frail individual seems unlikely; particularly in the context that the rape of Z occurred when his partner was not present.

231. The intervener suggested that he was being manipulated by his partner. The intervener has not produced one shred of evidence that shows his partner having manipulated him. At its highest, the messages from his partner could be interpreted as insistent but there was no sense of threat or negative consequences for the intervener if he did not engage. If it was true that TK controlled the intervener, it is surprising that written evidence of that control could not be identified given that the written word appears to have been his partner's only mode of communication.

232. I have considered carefully the messages between the intervener and his partner that have been collected by the police and the other messages from the intervener. It was suggested by the intervener that he may not have been the author of all of the messages. He suggested that his partner would from time to time borrow his devices to communicate when she was visiting him – which was odd as she had her own device for the purpose. He suggested that she may have been responsible for some of the paedophilic messages posted on his devices. However, the intervener did accept being the author of at least some of the paedophilic messages. In my judgment, the intervener was lying to the court when he sought to place responsibility on TK for the messages found sent from his devices.

233. In addition, I have read the unchallenged statement of the sister of his partner. She states that she received a message from the intervener after he had been arrested and was prohibited from contacting his partner stating, "Because if I'm honest with you I'm a pedo and that I like little boys and girls". The intervener's explanation for this message is that he says his partner had his phone and could have sent the message. He denies being its author. I reject that explanation. The context of the messages as set out in the statement was that the intervener was at that time unable to have contact with his partner due to his bail

conditions and was contacting his partner's sister asking if she had heard from her. I am satisfied that the evidence establishes that his partner was not present when the messages were sent from the intervener's Facebook messenger account. I am satisfied that the intervener was the author of those messages.

234. I am left in no doubt that those messages I have read in the police material, in the context of his guilty pleas, clearly establish that the intervener is a paedophile both in terms of his actions and in terms of his motivation. On the evidence before me, I have no doubt that the sentencing judge was correct when he identified that the intervener has an "entrenched and deeply ingrained sexual depravity in relation to very young children".

235. I have seen the statements from the police relating to their forensic examination of the intervener's various devices. It is clear from the police evidence that the intervener used a large number of social media/communication tools and storage mechanisms including cloud based storage . In his evidence the intervener claimed only to have some social media/communication tools, however I do not accept that evidence. The police evidence shows a considerable and wide-ranging online presence using a variety of social media, many of which utilised the same password as well as similar usernames based around his actual name. This again is indicative that he was responsible for the messages from his devices, rather than this being due to occasional usage by his partner. Due to the extraction processes used to "data carve" out previously deleted data, it is often not possible to identify the time and dates of certain documents. The police forensic examinations appear to be limited to what was physically contained on the devices that were seized and I am not aware that they were able to access the cloud-based storage accounts that the intervener held.

236. Those messages that have been extracted from the intervener's devices are highly indicative of a pronounced sexual interest in children, particularly messages between the intervener and his partner. Messages were sent talking about sexually abusing his daughter. There are a number of messages that discuss sexually abusing and raping Z. The messages include the suggestion of X and Y being exposed to and engaging in sexual activity. The discussion is quite considered in the sense that there is thought given to the need to have protection, whether STIs can be spread and whether anything would be said by Z afterwards, as well as plans to buy her an ice-cream.

237. In addition there have been sent from the intervener's devices a number of highly graphic indecent images involving children of all ages, including the very young being seriously sexually abused.

In Spring 2018, the intervener exchanged messages with another person about and wrote, "I'm a pedo… I love little girls". He then sent an image of an adult male penis wearing a condom and wrote that he took it before he fucked his little sister.

238. He then sent indecent images of a young female child and said she was his youngest daughter.

239. In Spring 2018, there are a number of messages from the intervener to Z's mother using social media asking if anything had happened to Z and if she had been sexually assaulted.

240. In an exchange between the intervener and his partner later in spring 2018 it is plain that they are discussing and planning out the rape of Z.

241. Ten days later the intervener and his partner discussed what appeared to be a fantasy about being in the girls' changing room and watching them change. They specifically name children in his family, including Z, X and Y . The exchange of messages includes a sexual fantasy about the children. It is not possible to know who wrote what. The intervener told me that all of the messages in this exchange were from his partner who was responding in writing to what he said at the time while they were in his bedroom. He said he was just doing it to please his partner. I reject that evidence. I have formed the firm impression from considering all of the exchange that this sexual fantasy about children, including X and Y was a mutual interest.

242. On 6th June 2018, after a series of verbally abusive messages, there is a message, "Can I rape [Z] with protection". In evidence the intervener confirmed he sent this message. He said he did so because his partner used to like engaging in that sort of chat and he would say it for her benefit but that he did not particularly like it. He claimed in evidence that he

had no plans to rape Z. That flimsy claim is totally contradicted by the content of the messages which plainly conspired to rape Z and the fact that he did rape Z.

243. On 14th June 2018 at 9.02pm, there was a photograph generated of Z wearing red nail varnish. Another photograph at 9.16pm shows Z sleeping with an adult hand resting on her bottom. At 9.50pm there were messages involving the intervener and his partner where again the author cannot be identified. The messages discuss doing "what you did before… rape" and to "film it". There is another series of messages at 10.16pm, suggesting sexual abuse of Z.

244. On 15th June 2018, there are a number of messages from TK to the intervener about Z saying something. The intervener sent a message to Z's mother saying Z complained that her private parts hurt:

245. There are a number of WhatsApp messages between the intervener and his partner on 15th June 2018 at 7.27pm that day, where again it is not possible to discern who was the author of each message:

"Just to make me feel better just in case [Z] says anything"

"It's my mum and E and F I most scared of"

"That is what scares me"

246. On 17.6.2018, there are further WhatsApp messages between the intervener and his partner which I am satisfied amount to the intervener offering a picture of the rape of Z to his partner and she wanted it. It was eventually from his partner's devices that the police harvested the photographs of the rape.

247. The photographs of the rape of Z contain no time signature. Z was too young to be able to say when it was and the period of opportunity when she was spending time with the intervener was broad. In his evidence, the intervener said he was unable to remember when it was, but that it had occurred while no one else was in the family home.

248. The intervener in his evidence accepted that at the time when he raped Z, his bedroom was in the same condition as when **Social Worker C** saw it in June 2018. I do not know how long his bedroom may have been in that condition, but it provides some corroboration to the timing of the rape.

249. There is an anxiety and urgency about the messages on 15th June 2018 that leads me to the conclusion that they were written in response to recent events involving Z being raped and the risk of being found out. On the basis of the various messages that I have analysed, it seems likeliest that the intervener raped Z at some time after 9.50pm on 14th June 2018 and before 6.17pm the following day. The messages suggest that she had been raped on an earlier occasion but it is difficult to know when that is referring to. However, the messages propose that on this later occasion the rape be filmed and the photographic evidence shows it was recorded.

250. It is possible that the earlier messages to Z's mother relate to an earlier rape but they do not have the same sense of urgency. It may be that they were an attempt to lay a false trail in case Z says something later.

251. When I look at the WhatsApp messages between the intervener and his partner as a whole, it does appear that there is encouragement from his partner for the intervener to rape Z. On 15th June 2018, her messages could be seen to be persistent or insistent. But there was no threat or jeopardy aimed at him within those messages. I am satisfied that he was entirely willing, indeed he actively wanted to rape Z. The encouragement from his partner to act on their mutual fantasy simply helped him to build up the courage to carry out the rape, frightened as he was of the consequences of being caught.

252. The message in Spring 2018 needs consideration. The intervener accepted that he must have sent the message sending a pornographic picture of a penis wearing a condom to a stranger who had identified themselves to be 12 years old and writing that he took it before raping his little sister. He claimed to have particularly poor recollection about this message. He said the only reason he would have engaged in this chat with a stranger would be because his partner was with him at the time. He accepted that the little sister referred to would be either X or Y. I am satisfied that at the least it represented a fantasy that the

intervener created for his own enjoyment. At worst, it was a confession. I will return to this important piece of evidence when I balance all the considerations in relation to X.

253. I am not persuaded that the intervener entered into these chats about paedophile behaviours solely to satisfy his partner. The evidence contains pages and pages of detailed, violent sexual fantasies written on the intervener's social media account and supplemented by sending images of child sexual abuse. I am satisfied that the reason he engaged in these enthusiastic exchanges with strangers was because of his profound interest in sexually abusing children.

254. There are a number of allegations against the intervener that have not been proven and that I have not been asked to make findings on. Their relevance seemingly being as to the parents' knowledge and their assessment of the intervener as a risk to children. I make it clear that I am not making findings in relation to these allegations and I do not rely on them in relation to the findings that I do make about the intervener.

255. Between 2003 and 2012, there are a number of allegations of sexual abuse over a long period of time against the intervener, which have resulted in no further action by the police or the local authority. They are denied by the intervener.

Pen lids and sexualised behaviours

256. X's behaviour with pen lids is distressing and concerning. It is difficult to unwrap where this behaviour comes from. The local authority submits that it is a behaviour that has been learned from the intervener. They support that by pointing out that Z has also made reference to the intervener putting a pen lid in her vagina.

257. The history suggests that there have been a number of incidents involving putting objects into X's vagina.

258. X's alarming behaviours involving pen lids may be in some way explicable as a form of problematic behaviour arising from her various conditions. It could be a form of self-

harming behaviour. It could be a form of maladaptive response to her sex drive. It could be a response to having been the victim of sexual abuse. It could have been a response to a combination of these factors, or to other factors I have not identified. It is almost impossible to look at X's behaviour with pen lids and be able to extrapolate backwards to discern how she reached this point.

259. X has demonstrated other behaviours that could be described as sexualised behaviour. It is alleged that she has inappropriately removed her clothes on occasions, there has been sexual touching between her and Y. Again it is difficult, in the context of X's condition to discern to what extent this behaviour has been caused by possible sexual abuse as opposed to sexual exploration, or a lack of typical boundaries in the light of her condition.

Findings

260. I turn to the schedule of findings sought, firstly in respect of sexual abuse by the intervener.

261. I first turn to consider whether there is evidence that X has been sexually abused. There is no definitive medical evidence that establishes this. It primarily relies on an assessment of what X has said to professionals and during the ABE interviews, allied to an overview of her behaviour more generally. This has been a difficult task to undertake, looking at all the evidence. I have had to factor in the potential for a range of alternative explanations for what X has said and how she has behaved. Her accounts are riven with difficulties that I have already identified in particular the multiple false allegations, and there is the potential with her condition for her to be manifesting abnormal behaviours or making allegations for a variety of reasons.

262. However, on the other side of the balance, I have to consider X's overall presentation, with the intensity of her behaviours and accounts, "hurting", the obsession with pen lids and her other sexualised behaviours in combination with the accounts she has given of having been sexually abused. When I balance all the factors, I am satisfied on the balance of probabilities that X has been sexually abused.

263. I accept the evidence from the professionals who witnessed her early accounts of being abused by the intervener and I observed myself particularly in the first part of the ABE interviews that there was a cogency and detail about the allegations of sexual abuse. I recognise that the waters have been considerably muddied by X's numerous false allegations against staff members, but I accept the evidence of the professionals involved that these were allegations made as part of heightened behaviour being exhibited by X. I note that the same could not be said about X's second ABE interview when she made allegations against NF. However, those allegations came in the context of X having made allegations against the intervener to NF immediately prior. It is difficult to know exactly why X made those false and incredible allegations against NF but the reported comments that she made to her mother in the aftermath suggest that she believed she was in some way doing what the family may have wanted of her in order to cause her to be returned home.

264. I turn to the question as to whether the intervener has sexually abused X. It is established beyond contention that he is a paedophile and I am satisfied that he is sexually attracted to children. He also has demonstrated by his abhorrent behaviour towards Z that he is capable of engaging in behaviour that is not only paedophilic but also incestuous. In that regard, many of the sort of inherent improbabilities that might ordinarily be considered in weighing such an allegation are simply not pertinent in this case. I am not persuaded that the intervener's sexual appetite was limited only to very young children. Contained within the photographic material obtained by the police was a photograph of the genitalia of a female child estimated to be in the age range of 10-13 years old. In addition the online discussion between the intervener and his partner included the sexualised discussion not only of Z, but also of the other children in both their families, including male and female children and including X and Y who are much older than Z.

265. I am satisfied that the intervener has had ample opportunity to have access to X. He lived in the same house as her for extensive periods. His abuse of Z demonstrated that he was capable of and had the opportunity to carry out the sexual abuse of a child within that home. I am not persuaded by the parents' claims that the intervener was never left alone with X. When the allegations first arose in respect of Z, the parents made a very similar claim about how that was impossible because she was never alone with the intervener – however the photographic evidence of him sexually abusing Z in his bedroom in their home proved how wrong they were. I do not accept the parents maintained an entirely watchful

approach in respect of X as they claimed. The father rarely ventured upstairs. The mother, who has been described as overwhelmed at various times by professionals, was obliged to try to meet the needs of two highly vulnerable children in X and Y, as well as having a multitude of other demands on her as the mainstay of the household, populated as it was with the father who has a high level of needs, as well as having the presence of the intervener who plainly lived in filthy and stinking conditions, drank heavily, became aggressive and frequented anti-social and mostly nocturnal hours. Meeting the needs of X and Y has been an experience that professionals at the residential unit and at the various educational establishments have struggled significantly with. I simply do not accept that the mother was able to keep an eye on both of them the whole time as she claimed. Nor do I believe that she was able to keep an eye on Z the whole time when she was there.

266. When I consider X's allegations against the intervener, there are elements of them, particularly the first part of the first ABE interview that appear quite cogent. She provides quite a lot of detail in the context of her communication difficulties, particular in enacting with dolls and identifying body parts with gingerbread figures. However, if I were to rely only on X's accounts, I would not be satisfied that the standard of proof had been met because of her multiple false allegations and her inconsistencies.

267. In my considerations I factor in the intervener's online communications. I am satisfied that the intervener indulged in sexual fantasies that involved sexually abusing X. I do not accept his suggestion that this was all led by his partner and he simply went along with it to please her. Notwithstanding his difficulties, I struggle to accept that he is so weak willed that he would indulge in paedophilic fantasies about his sisters and his daughter if as he claimed he was not a paedophile. I am satisfied that he was an entirely willing participant in those fantasies.

181. When I put together X's accounts of sexual behaviour by the intervener, with the intervener's sexual fantasies involving her and the fact that he sent a sexually explicit photograph with the message, "I just took it before I fucked my little sister";; I am satisfied on the balance of probabilities and make a finding that the intervener has sexually abused X on at least one occasion by penetrating her with his penis.

268. I do not make a finding of the intervener having inserted a pen lid or pen lids into X's vagina. X's obsession about pen lids, her self-harming in terms of putting pen lids into her own vagina, her multiple allegations against multiple individuals that they have put pen lids in her vagina mean that I cannot be satisfied to the necessary standard that this has occurred. I note that Z said something similar about the intervener and pen lids, but I am not satisfied that within the wider context, that would be sufficient to establish a finding.

269. As to whether the intervener sexually abused X by sexual touching. This allegation is founded on the evidence of EF that in July 2019 X said at a CAMHS appointment with a Senior Nurse Practitioner, that the intervener sexually touched her and made her sexually touch him.

270. Further evidence is found in X's account to NF in October 2019, when she said the intervener sexually touched her and pointed to her genitals.

271. The third piece of evidence is in the third ABE interview when in reply to the question has anyone ever touched your mini (meaning her vagina) that you did not want to, X replied the intervener, then she said that the intervener took her knickers down. That interview was highly problematic for the reasons I explained and I place little weight on its contents.

272. However, when I put together all these accounts, in the context of the intervener's sexual fantasies about X and his rape of her; I am satisfied on the balance of probabilities and make a finding that on at least one occasion the intervener has sexually abused X by sexual touching and digital penetration.

273. I am invited to and do make a finding that as a result of the intervener's sexual abuse of X, she has suffered physical pain and emotional and psychological harm namely distress and trauma. X in the first ABE interview, when showing what happened with the dolls identified that the intervener used the area between his legs to hurt her. Having found that the intervener raped X, I accept that would have been likely to hurt her and I accept her account that it did. I also draw from the wider evidence of X's behaviour as well as her multiple recorded interactions with professionals that she has suffered emotional and psychological harm from being raped by the intervener.

274. I find that the rape and sexual abuse of X occurred at the family home during a period when the intervener was living there (i.e. prior to his arrest in June 2018). It is X's account that the intervener carried her through to his bedroom. She gives good context as to what else was happening at the time – that her mother was in the hospital at the time.

275. Y has a very similar presentation to X and shares many of her vulnerabilities. During the time that the intervener was in the family home, Y was also at risk of sexual abuse from the intervener. I am also satisfied she was likely to suffer significant emotional harm from being exposed to X's disturbed behaviour in the aftermath of her abuse by the intervener. I am satisfied that on the basis of what happened to X, that at the relevant date Y was likely to suffer physical and emotional harm from the intervener as a result of the sexual assault of X.

276. I am asked to find that, "it is more likely than not that X's sexualised behaviour and multiple reports of having pen lids and other objects inserted in her vagina (and on one occasion her rectum) are manifestations of:
(a) her experience of the sexual assault(s) on her by the intervener; and/or
(b) the psychological trauma she has experienced in consequence."

277. There have been behaviours that could be described as sexualised behaviour exhibited by X for many years. The potential exists that some of X's sexualised behaviours are a maladaptive way of expressing her feelings or of her self-harming. The history is too muddled to be able to clearly identify a single root cause for X's sexualised behaviour. Similarly, the behaviour of inserting pen lids into her vagina is not something that I can ascribe to any single event. It is certainly plausible that X's sexual abuse by the intervener could have been the cause of her pen lids behaviour but on the balance of probabilities I am unable to make such a finding. Put simply there are too many factors capable of contributing to or causing her behaviour and I am unable to separate out any one strand to the necessary standard.

278. I am asked to find that X witnessed the sexual assault of Z by the intervener in the family home. I am satisfied that X possessed accurate knowledge about not only the intervener's sexual abuse of Z but also how that abuse took place – that it was an oral rape. X's description of being scared by what she saw was in my judgment compelling detail as

was her description of trying to get Z to put clothes on at the time. I am not satisfied that this knowledge was simply second-hand and overheard by X and/or Y. The evidence I have heard from the staff at the residential unit establishes that they had no significant knowledge of the allegations involving Z at the time when X first mentioned inappropriate behaviour by the intervener towards Z in May 2019. I am satisfied that by the time X gave the fuller account in December 2019 of what she observed occurring between the intervener and Z, the staff still had only the vaguest awareness of the allegations and did not know of the detail of the allegation.

279. I note that the messages of sexual abuse fantasies included X and Y being present while sexual abuse took place. When I put together all the evidence, I am satisfied that X came to know about the abuse of Z because as I find on the balance of probabilities, she witnessed it take place in her home. I also find that X suffered emotional harm as a result – she said she was scared at the time.

280. In relation to Z, I have already indicated my finding that the intervener orally raped his daughter Z in his bedroom in the family home and that he took photographs of the sexual assault and shared them with at least one other person. I am satisfied for the reasons given that the rape of Z that was photographically recorded occurred around 14th or 15th June 2018.

281. I find that the intervener is a predatory paedophile with a longstanding interest in young children. The conviction in addition to my findings in relation to X establish that the intervener is a predatory paedophile. I am satisfied on the basis of all the evidence including his electronic communications and his photographic and video files that this was a long-standing interest.

282. I am invited to find:

> " the intervener has a sexual fixation with being a baby/small child, baby/small child behaviours and/or baby/small child paraphernalia; this is manifested in the following ways:
> wearing adult nappies; urinating in nappies; being changed by an adult;

wearing baby-style clothing in adult sizes (eg: baby-grows); drinking from baby bottles; using a child's dummy and urinating, masturbating and ejaculating into a children's potty."

283. It was accepted by the intervener that he wears adult nappies, that he has urinated into them, he also described being changed by an adult and he accepted wearing baby-style clothing (indeed he was wearing such an item in the police body-cam video that I have watched of his arrest). He has also accepted drinking from baby bottles and using a dummy.

284. The intervener in his response to the schedule of findings denied masturbating and urinating into a potty. However, under cross examination he said he believed that it was him in an image and a video showing a man masturbating and urinating into a Thomas the Tank Engine potty. He then said he believed he may have masturbated into a potty, but then said he was not remembering off the top of his head. I find that the intervener did urinate, masturbate and ejaculate into a children's potty. I also find that the intervener's interest in baby items, paraphernalia and dressing as a baby was not an innocently-held interest in regressing and behaving as a baby borne out of his childhood experience of his aunt being abusive towards him. There is a wealth of evidence in this case that plainly demonstrates that the intervener's fixation about baby items and dressing as a baby were sexually motivated. I therefore make this finding in full as sought and I am satisfied that given the intervener's interest in nappies developed when he was 14 years old that this provides further evidence of his long-standing sexual interest in children.

285. I am asked to find: "[the intervener's] fixation also includes soiling nappies and masturbating into them and masturbating and urinating in baby bottles; masturbating on changing mats and/or in baby-change rooms in public buildings; and pretending to be a baby/small child as part of sexual role play."

286. This is denied by the intervener although I note he has accepted a number of elements of this, such as soiling nappies and masturbating on baby change mats. Given my other findings, I do not consider it necessary to delve any further into the intervener's behaviours.

287. I am asked to make findings about the parents' state of knowledge in relation to the intervener and whether they knew that he posed a sexual risk to females, including children. The finding sought is drafted in the following way:

"The Parents have been aware since at least 2003 of allegations that the intervener potentially posed a sexual risk to females, including children;

(i) 2003:

the intervener was arrested on suspicion of raping under-age girls on 2 occasions in October 2003

(ii) 2006:

the intervener was alleged to have sexually assaulted on at least one occasion in May 2006:

a) a female cousin; and/or

b) a sibling

(iii) 2006:

The Mother told a social worker who discussed the allegation at (ii) with her that she denied the intervener would ever expose himself or touch girls and she would report him if he did so.

2006:

Report to LAC Review: The mother and the father had said they believed the intervener was innocent and he was being targeted by extended family members

(iv) 2010:

Anonymous referral that a sister had been touched inappropriately by the intervener and his girlfriend

(v) 2012:

Unannounced home visit: X (aged 6 years and 3 months) comes to the door naked; parents deny that X and Y have shown any sexualised behaviour

(vi) 2012

Two anonymous referrals:

(a)On occasions X, Y and a grandchild had been left in the intervener's care; X and Y were displaying sexualised behaviour,

(b) the intervener had soiled and masturbated into nappies and bottles which he left in his bedroom;

(c) the intervener watched recordings of adults and children in nappies"

288. I have already detailed the numerous appellate decisions that warn against the court making assumptions. The difficulty with the way the local authority pleads its case is that implicit in its case is an expectation that the parents should have made an assumption about the intervener on the basis of unproven allegations. However, that is a step that the court is not entitled to take on the basis of disputed allegations that have not been proven in the course of these proceedings.

289. I have already identified the multitude of allegations that the intervener has faced over the years. However, I cannot base a finding of failure to protect arising as a result of those unproven allegations.

290. In relation to the above pleading, although I am satisfied that the intervener was arrested in 2003 on suspicion of raping under-age girls on two occasions; I have not been asked to find those allegations were true and I therefore cannot find the link between that unproven allegation and a failure to protect on behalf of the parents. Similarly, I cannot make such a finding on the basis of the disputed and unproven allegations from 2006 that the intervener had sexually assaulted a female cousin and/or his sister. The mother's denial that the intervener would ever expose himself or touch girls inappropriately is not something that I can base a finding on.

291. I am unable to make any findings in relation to the referral in 2010 – this was an anonymous phone call that appears to have been made by the parent of another student at the school his sister attended. I have not heard from the maker of the referral and I do not rely on its contents. I therefore determine that this anonymous referral does not prove knowledge on behalf of the parents as to any threat the intervener posed to the children.

292. For the same reasons, I am unable to rely on the contents of the anonymous telephone referral made in 2011.

293. There were two anonymous letters sent to social services, a typed one in 2012 [N66-67] and a hand-written one that was date-stamped by the local authority in 2012. Some of

the allegations contained within those letters are now corroborated by other evidence. However, that does not mean that the entire contents should be accepted to be true. I have not heard evidence from the writer or writers of the letters. I note that in the immediate discussion with social services, the social worker's case recording states, "It seems that the family are probable victims of a series of malicious referrals… At this stage none of the allegations have been substantiated". I am in no position to determine whether the contents of the letters were malicious, true or a combination of both. Therefore I am unable to base a finding of failure to protect against the parents on these referrals.

294. The local authority seeks a finding that in 2012 it discussed with the parents the allegations at that time against the intervener but the parents rejected all of them. I make no finding based on that rejection because I have not been able to determine the truth or otherwise of those allegations.

295. The local authority seeks a finding that at that time, the parents "accepted that the intervener had been sharing X and Y's bedroom, but they had 'kicked him out of there'". In support of this allegation, the local authority relies on a case note that arose within the casework relating to the children's sister. The contents of that recording state, "Parents report that previously the intervener did sleep in Y and X's bedroom but they have kicked him out of there". The case note is unsigned and does not identify its author. I have heard evidence that at some point the bedrooms were reassigned. It could be that this is no more than a reference to that change of bedrooms. I therefore do not make a finding that the intervener and X and Y shared a bedroom until the parents, "kicked him out of there".

296. There are areas of knowledge that the parents or at least the mother did have about aspects of the intervener's behaviour.

297. In 2012 the mother entered into a written agreement with children's services not to allow X or Y to be left unsupervised with their older siblings, including the intervener "who has a history of involvement with Children's Services". That explanation in relation to the intervener was unhelpfully obtuse in the context of these parents' cognitive issues – the history with Children's Services having at that time been primarily that the intervener was the subject of unproven sexual allegations. However, the mother's signature makes

clear her agreement that X and Y were not to be left in the sole care or unsupervised with their older siblings.

298. The local authority seeks a finding that in the New Year of 2012 at an unannounced visit X (then aged 6 years and 3 months) came to the door naked and in the subsequent discussion denied that X and Y have shown any sexualised behaviour. The parents in their evidence deny that X ever went to the door naked. The social work records prepared by the attending workers set out that X came to the door naked at 11am. I heard no evidence from those social workers, but given these were events of more than 8 years ago it would be surprising if they retained much memory of it. In her evidence the mother denied such an event had ever occurred and suggested that the social workers were lying about this.

299. The context of the social workers' recordings is important. They were there to discuss with the parents the contents of the anonymous referral that had been received shortly before. Why would a social worker fabricate an allegation that the child was naked? Their decisions on the case at the time show that the children remained in the care of their parents with support. In the oral evidence of both parents there was a high degree of defensiveness in their responses about this issue. In the case of the father, it was unpersuasive in the context that his recollection around that period was severely limited other than on this point of denial. On balance, I am satisfied that the social worker recording is more likely than not to be accurate and I was not persuaded by the parents' denials. I find that, X, then aged 6 years old, did answer the door to the social workers while naked. This incident is one example of a failure to protect which of itself may not have great significant, but it must be considered in the wider context of the levels of awareness and protectiveness shown by the parents.

300. I am satisfied on the basis of the evidence before me that X and Y are particularly vulnerable children. As a result, they require a greater than normal level of supervision and protectiveness. Their ability to protect themselves is limited.

301. I am asked to find that the parents failed to act on and/or maintain advice and protective measures discussed with professionals. There were two written agreements that the mother entered into with the local authority. The first was in August 2006 and included a provision that, "[the intervener] is not allowed to take other young people, including his cousins or

younger sisters into his bedroom". The mother in her evidence could remember entering into that written agreement. Asked why she entered into it, she said, "I don't know, I just did. I just signed it."

302. The second written agreement from 2012 was never lifted. It required that "X and Y are not left in the sole care or unsupervised with their older siblings [including the intervener]". The mother agreed that she probably did sign it, and the document bears her signature. She told me, "You should always sign the agreements".

303. The father in his evidence also told me he remembered being asked to sign a written agreement to protect X and Y. However, as Ms Connolly rightly pointed out, his signature does not appear on the agreement documents before the court. Asked then whether he remembered discussing a written agreement with the mother, the father replied, "I can't think, sorry".

304. It has been a mainstay of the parents' cases that notwithstanding that they were not aware of the sexual risk that the intervener posed to the children when he lived in the home, nonetheless they did not allow the children, X, Y or Z to be alone with him in the home. The mother in her evidence told me that the younger children were never allowed upstairs or anywhere out of her sight. She was insistent that X and Y were always with her and never out of her sight.

305. When I asked the mother at the end of her evidence why X and Y were not allowed upstairs, she told me she was worried about their safety. Asked what was upstairs that was unsafe she told me, "just in case they knocked on the intervener's door or something… he could have gone out and started on them… shouting at them".

306. By contrast when the children's sister was asked whether there were any parts of the house X and Y were not allowed to go into, she replied, "Just [the intervener's] room and mainly the kitchen, she did not want them around the cooker." Pressed about any restriction on X and Y going upstairs, the children's sister replied that, "Mum didn't like them to play in their bedrooms, they always used to be in the hallway or backroom."

307. When the father was asked whether Z would play upstairs with X and Y, he agreed that they did, "…but we always kept an eye on her and that". He went on to say that Z was "up and down all the time anyway" and explained that she used to slide down the stairs on her bum. The father was insistent that Z had never been into the intervener's bedroom, at least not while they were present at the home.

308. Later in his evidence the father was asked whether X and Y used to play in the hall upstairs and answered, "Not when the intervener was there". Later he contradicted himself and said that the girls, "used to play upstairs, but they didn't go near the intervener's room, they just didn't."

309. I was not satisfied by the parents' and the children's sister's contradictory accounts. The suggestion that X was kept under constant supervision is undermined by my findings that the intervener has raped her and also exposed her to his raping of Z. If the levels of supervision and attention the mother claimed had taken place, that would not have been possible.

310. I am not sure why the parents were so alarmed by the risk that the intervener posed to the younger children that they claimed they would not allow them upstairs when he was there. The explanation given was that he could shout at them. I have heard evidence that the intervener would drink excessively and become aggressive. The parents have claimed that they did not believe all the sexual allegations against the intervener and did not believe that he was a sexual risk to children. However, I do have clear evidence from the parents that they believed that the intervener did pose such a risk to the children that he could not be alone with them at all. I therefore find in that context that the parents nonetheless failed to protect the children from the intervener.

311. I have heard evidence in relation to an incident on the trampoline involving QM, the ex-partner of the children's oldest sister. The mother accepted that there were two occasions when one of her other daughters had gone to QM's home with an older sister and the police had been called to bring them back. She rejected social worker reports at the time that she said she, "trusted him with her life", and she told me that she did not trust QM at all and that the children were not allowed to go to his home. She gave me the impression that she had identified QM as a serious risk to the children.

312. The mother was asked about the contents of the children's sister's statement which stated that QM had given another sister a love bite when she was about 12/13 years old, on the trampoline. The mother accepted this had occurred but told me she was protecting the children at the time. She told me that her daughter had come around with QM, that he was not welcome at their home and she had told her daughter they could only be there for 5 minutes. The mother said she had been in the house when QM gave the love bite to her child. Under cross-examination, the mother accepted, "I let QM in the garden with the children and I was not there. That was not safe. I can't remember why I let that happen".

313. The following day, when asked questions on behalf of the father, the mother changed her evidence. She was taken to a case summary activity report entry for 2004 that related that the mother had reported to social services that a 43-year old man had given her child "a love bite" on the neck and bruised her leg. According to the report this had happened while her child was with her older sister at a friend's house. The mother accepted in cross-examination that she might have mis-remembered the events and been confused.

314. When she gave evidence, the children's sister was clear that QM gave a love bite to her sister in the family garden on the trampoline. She gave quite a lot of context – that her sister did not tell everyone straight away but that when the mother was told, "she went mental". She also corroborated the mother's first account, that QM had only been there a short time.

315. I am not invited to deal with this incident in the schedule of allegations, which is unsurprising given that the statement was dated 23rd February 2020, well after the schedule was drafted. I have heard evidence about this incident, and I accept the children's sister's account as to what occurred, supported as it was by the mother's initial version. That incident provides an example of the mother having identified a risk to the children, but failing to act sufficiently to protect them. In that regard it provides support to my finding that there was a failure to protect X despite the parents appreciating that the intervener posed a risk to the younger children (albeit they say not a sexual risk). It flows from that finding that X suffered significant harm and Y was likely to suffer significant harm arising from the parents' failure to protect.

316. The parents clearly appreciated that the children (X, Y and Z) needed to be protected from the intervener albeit for reasons other than sexual risk. I have found that they failed to put in place the protective measures that they had identified were necessary and they failed to maintain the protective measures in the written agreements (albeit these had become dated).

317. I have found that the parents were aware of the intervener's abnormal interest in and use of adult nappies and baby paraphernalia as well as his pretending to be a baby. However, I do not draw from that knowledge a conclusion that they were or they should have been aware that of the risk that he would sexually abuse X and Z.

318. The failure to protect that arose was that they had an awareness of the intervener's peculiar behaviour and did not share it with the social workers at the time, particularly when issues surrounding the intervener were being discussed. The parents should have shared with the social workers the same information that the mother shared with Dr Halari when discussing the intervener's interest in adult nappies and baby paraphernalia - that she knew he had a problem and she never trusted him around the girls.

319. On the basis of the evidence I heard from the social workers, I am satisfied that this information being shared would have sparked serious safeguarding concerns for the local authority about a risk of sexual harm from the intervener to X, Y and Z.

320. As already indicated, the local authority had within its files information that the social worker accepted would have alerted her to a potential sexual risk to the children from the intervener. The systemic failings in the way the local authority treated the historic information meant that it was not factored into the social worker's considerations and she at the time encouraged and supported the intervener's relationship with Z. On the basis of Social Worker A's evidence, I have little doubt she would have approached Z's case differently had she been fully aware of the background.

321. The parents have sought to rely on the local authority's approach as a reason why they should not have been concerned about the intervener. However, that argument does not sit with their attitudes at the time – that the intervener could not be trusted or left alone with the children. The bottom line is that the parents carry the primary responsibility for keeping X and Y safe. The errors of the local authority do not take away from that.

322. In relation to the extent of any failure to maintain advice and protective measures by the parents. I have heard evidence that the parents were adamant that there was no opportunity for the intervener to abuse X nor to abuse Z while X was present. I have found that this abuse did take place. Having rejected the parents' claims, I am in no position to quantify to what extent they did or did not put in place the protective measures that they claim. Plainly those measures were not in place when the abuse occurred.

The parents' levels of knowledge in relation into the risk that the intervener posed

323. The local authority has sought to rely on the many unsubstantiated allegations that were made against the intervener over the years. This amounts to little more than, "no smoke without fire". However, there were aspects of the intervener's behaviour that the parents may have been aware of and this part of the judgment is going to examine the extent of the parents' knowledge and their responses to it.

324. I am invited by the local authority to make a finding in relation to the mother's awareness of the intervener's interest and behaviour as "a little person"; and that the mother discussed it with his partner and encouraged their interest.

325. The evidence in support of this is contained in a text message exchange found in the police material. The police located on his partner's laptop two screenshots taken from Facebook using a mobile device. The timings of the messages were all between 9.28am and 9.43am, and the messaging conversation was with the intervener's "Mum". The exchanges read:

"Received: Can I ask you something darling? I don't want to be nosy

Sent: Yh

Received: Is it your condition or are you little like [the intervener]? Please tell me if I'm wrong

Received: Not that it's makes any difference you still will never be judged for it. X

Received: Sorry darling have I said to much? X

Sent: I am like [the intervener] but I have never got to be myself until I met [the intervener]"

"Received: Awww darling I think that's wonderful. X

Sent: I think that is why we get on so well

Received: Yeah. I think it's wonderful. X

Sent: If he is not little than I am so we take it in turns

Received: Awww his daddy your mummy

Sent: Yh

Received: That's wonderful, it really is.X"

326. In evidence the mother denied ever having such an exchange. She claimed that she would not use the sort of language in the message and would never call anyone apart from her girls, "Darling". She accepted that she had sent text messages to the intervener's partner when she asked to stay at the house, but that she had never had a conversation with her and did not like the girl. She claimed that the intervener must have used her phone and deleted the messages afterwards.

327. The intervener in his evidence, when asked if he remembers sending the messages to his partner, initially replied, "I can't remember off the top of my head". He accepted that the messages had a different tone or quality about them compared to his usual messaging exchanges with his partner and finally he agreed that he did not send those messages to her.

328. The police material identifies the source of the messages as the mother's mobile phone number and which is named as the intervener's "mum". The timing around 9.30am is at a time when the intervener was usually not awake (typically he woke at 3pm unless it was "pay day". The intervener accepted they were not from him and do not reflect his writing style. The mother's claim not to use the word "darling" except with her girls was not convincing. In content the messages were a careful probing of a sensitive issue. The author

was plainly keen not to cause offence and the messages were peppered with notes of affection and acceptance, such as "darling" and kisses at the end of sentences. Having been received, the intervener's partner valued the messages enough that she saved them by taking a screen shot of them.

329. The device the messages were obtained from was the intervener's partner's laptop. The messages were recovered from the Google chrome cache and identified the messages were contained in screenshots taken from the Facebook URL. The file path for the "cache" identified the partner's name as part of the file address. The messages were to the mother's mobile number and that was identified as the intervener's"Mum". These factors lend to weight to the assertion that the messages were sent between the mother and the intervener's partner.

330. I have taken into consideration the evidence of the mother's sister which sets out the mother's disgust at removing four bags of dirty nappies from the intervener's room and that she was "obviously very puzzled and confused by his actions". Similarly with Dr Halari the mother expressed disquiet about the intervener's practices. The content of conversations is inconsistent with the content of the messages I have set out. However, they took place at different times – the conversation with the mother's sister was from 2014, and with Dr Halari after proceedings were commenced in 2019. It is quite feasible that the mother was saying different things to different people about this topic.

331. I have also taken into account the referral to the NSPCC sent by the mother in January 2019. The content of that message is one long sentence and contains a number of spelling and grammar mistakes. It was sent at 11.26pm. The messages sent to the intervener's partner also contain some spelling and grammar mistakes but less so. I do not know what devices the messages were sent on but I take judicial notice that some devices automatically apply auto-correcting software to messages as they are being written. I am not satisfied that this apparent disparity outweighs the other factors I have taken into account in considering who was the author of messages with the intervener's partner.

332. On balance, I am satisfied that the messages were sent by the mother. The information about the devices used and where the information originated, as well as the general tone of the messages which are in keeping with that of a cautious but interested mother of her son's partner outweighs the other considerations that I have identified. I find that in those

messages the mother was supportive towards the intervener's partner and the mutual interest she had with the intervener of being "little people".

333. I have heard evidence in relation to the intervener's interest in and use of adult nappies. I have heard of a series of occasions when the parents were aware of the intervener's use of adult nappies. The father was reported by FSW to have observed a delivery of nappies arriving, something he later denied. I prefer FSW's evidence about this. The mother had cleared out the intervener's room on two occasions, when he first moved out and after his arrest in 2018 and found adult nappies on both occasions. In addition, the father gave evidence that he and the mother had seen a picture of Z's mother wearing a nappy when they visited when the intervener lived with her, as well as a picture of both Z's mother and the intervener with dummies in their mouths. The mother's evidence about her knowledge is very inconsistent. She told me the first she knew about the adult nappies and baby paraphernalia was after the intervener's initial arrest in 2018. In her evidence, the mother gave the strong impression that she was unaware of the intervener having an interest in these sorts of matters until after he had been removed from the home.

334. According to the social worker, X and Y were also aware of the intervener's use of adult nappies. However, the detail of how this came to be known is not clear in the evidence.

335. The mother's account to Dr Halari gives a very different impression, "She told me that she is able to supervise her children and she has been able to raise her other children without any problems. She stated that none of her children have been near the intervener. She said that she found out that the intervener would go on the net and buy nappies and dummies as well as potties. [The mother] said that she knew he had a problem and she never trusted him around her girls, so therefore she never let him anywhere near them". That report was dated 13.5.2019 and the conversation took place at a time when the allegations that the intervener had sexually abused Z and X were not known to the parents. In cross-examination, the mother accepted saying that to Dr Halari.

336. I am satisfied that that earlier exchange with Dr Halari was a more accurate account of the parents' attitude towards the intervener. That they were aware and perturbed by his

interest in wearing adult nappies, his obsession with baby paraphernalia, and considered that he had a problem and they sought to protect the children by keeping them away from him.

337. However, it is also clear from the evidence of the social workers and FSW, which I prefer, that the parents did not share with the professionals at the time their concerns about the intervener's interest in baby paraphernalia and adult nappies. If they had done so, on the basis of the evidence that I had heard from the social workers, it would have sparked serious professional concerns being raised about the intervener and the sexual risk he posed. The link between the intervener's sex offending and his interest in baby paraphernalia and nappies had been made in the anonymous letters that were deemed to be malicious. However, the parents were aware of the contents of those letters at the time, although it is open to debate whether they appreciated it, or whether they retained the information.

338. Dr Halari's opinion was that, "Both parents do not have a good enough understanding into their children's vulnerabilities and the potential risk they can be exposed to socially, educationally and in the home." This situation with their awareness of the intervener's interest in nappies and baby paraphernalia and their failure to share this information with professionals in my judgment amounts to a failure to protect, either because they recognised that there was something so odd about the intervener's behaviour that led to them recognising he was a risk to children; or because they simply could not identify those markers that would lead a parent to be concerned.

339. I am invited to find that the parents failed to protect Z when she visited the intervener at the family home. The intervener has said that he sexually abused Z while everyone was out, however I can place very little weight on what he says about this. He was unable to provide any context and detail and my impression was that his evidence was little more than an attempt to exculpate himself from responsibility for his own actions and to protect his parents.

340. The parents' assertion is that the abuse of Z must have taken place while they were out because Z was never left alone with the intervener when they were there. When Z gave her account to a student social worker about the sexual abuse by the intervener , she was asked

who was there and said, "Nanny, X and Y". I have not heard evidence from the student social worker. However, that account by Z is corroborated by my finding that X was present and witnessed Z being abused by the intervener.

341. I have already indicated my finding that the photographed rape of Z was likely to have occurred at some time between the evening of 14th June 2018 and the following day. I have the benefit of a chronology of the times when the mother was at hospital (prepared because X indicated that was where the mother was when she was abused by the intervener). There are no hospital visits by the mother between March 2018 and 31st December 2018.

342. The Whatsapp messages between the intervener and Z's mother of May 2018 provide further evidence that Z was not kept away from the intervener in the way the parents claimed. In those messages which start at 10.10pm, the intervener tells Z's mother that Z is with him and they discuss him sleeping alongside Z. Those messages suggest that Z slept or was going to sleep alongside the intervener. That situation is one that if the parents' accounts are accurate simply could not have taken place.

343. I am satisfied that the parents realised that Z needed to be kept from being left alone with the intervener but failed to do so.

344. I am invited to find that the mother has an enmeshed and protective relationship with the intervener and has not been honest with professionals about their relationship.

345. The local authority relies on the mother having disposed of the intervener's computer after his first arrest in 2018. The local authority relies on the mother having said in late summer 2018 that the intervener told her there were photographs of Z in the material taken by the police.

346. I am not persuaded on the balance of probabilities that the mother's disposal of the computer was an attempt to protect the intervener or to cover up his crimes. The context is that the local authority had been making demands on the parents for many months to clear out the intervener's room so that it could be occupied by one of the children. If it had been an attempt to dispose of evidence, then leaving it in a skip next to the house is a pretty

forlorn effort. The police ultimately collected the computer in any event, and the subsequent police analysis did not reveal any incriminating evidence was found on that device.

347. The local authority also seeks to rely on the fact that when he was arrested in late autumn 2019, the intervener was found to be in possession of a bank card in the mother's name. It was accepted by the mother that the intervener was using her bank account. She explained that she had an account that she did not use which had been utilised by one of the other older children, and subsequently by the intervener.

348. I have to be mindful of the context of the family, with so many members whose functioning is quite limited within which the mother was one of the most capable and senior members of the group. In that regard it was perhaps unsurprising that this sort of unconventional approach had arisen. What was surprising about it was that this arrangement continued even after the intervener was arrested and continued during the period that the parents claim to have distanced themselves from him and while they sought special measures at court so they did not have to see him.

349. I am not satisfied on the evidence before me that the mother's relationship with the intervener was enmeshed. Even before he left the family home, the evidence suggests that most of the time he was apart from his mother, not least because of his nocturnal sleeping patterns.

350. However, I am satisfied that the parents were defensive towards the intervener. I accept the social workers' evidence about this. I accept that when faced with the allegations relating to Z the parents asserted that she could not have been abused because she was not left alone with the intervener and they maintained that view until the intervener pleaded guilty.

351. On the basis of the findings I have made, I am satisfied that the threshold criteria under s.31 of the Children Act 1989 is established. I am satisfied that at the relevant date the parents had failed to protect Y and X from the serious risk that they recognised that the intervener posed to the children with the result that X suffered significant physical and emotional harm arising from being raped and sexually abused by the intervener and that Y was likely to suffer significant harm as a result.

Provision of this judgment to the intervener in prison

352. After the provision of written closing submissions and of written responses, I have received an email from Mr Elgadhy. Hitherto I have not permitted hard copies of the case papers to be retained by the intervener in prison. The reason for this was to protect the children, in particular X, Y and Z from sensitive information including allegations of sexual abuse being misused or potentially being circulated amongst paedophiles within the prison.

353. I have previously made provision for the intervener to be produced by video link so that he could discuss the closing submissions with his legal team supported by the intermediary. That has now taken place.

354. The intervener now makes a request for a copy of the closing submissions prepared on his behalf to be released to him, so that he can fully understand what is said on his behalf. In addition, he requests a copy of this judgment. It is submitted on his behalf that the documents could be redacted prior to being sent to the intervener to remove the names of the children and that he has a locked cabinet in his cell where he would keep the documents.

355. I have not received any submissions from any of the other parties about this issue. I am prepared to entertain further submissions after this judgment has been handed down, but my preliminary indication pending the receipt of full submissions is as follows:

356. I am not minded to allow a copy of the closing submissions to be physically retained by the intervener. They contain sensitive details about the sexual abuse allegations. Redaction would provide little protection for the children given that the intervener would be able to identify the children concerned.

357. Secondly, this judgment has unfortunately had to go into careful detail about the sexual abuse allegations and a large amount of the paedophilic messages that the intervener

engaged in. He is a convicted paedophile. I am not minded to allow for this sensitive material about these children to be provided to him to keep in his cell. I also take judicial notice of the fact that sensitive documents relating to the sexual abuse of children is highly prized amongst serving prisoners convicted of the sexual abuse of children. I am concerned by the potential for this material relating to X and Z, as well as others, to be abused in this way.

358. It is important that the intervener be made aware of this judgment and my findings. Upon handing down judgment today, I have also made provision for a video-link session to take place today with his intermediary. That will enable his legal team to convey the content of the judgment to him with appropriate support.

359. I will hear further submissions in due course about the physical provision of documents to the intervener in prison and I remain open-minded as to ultimately what documents should be given to him to retain.

HHJ Oliver Jones

Judgment handed down on 17th June 2020

A document headed "Clarification of Judgment" was handed down on 26th June 2020 and subsequently incorporated into this judgment.