

In the Family Court Central London

ZC22C50265

Before:

HHJ Laura Harris

A Local Authority

and

Mother

and

Father

and

A, B and C

(by their children's guardian)

Wing Chan counsel for the Local Authority

Joanna Youll counsel for the Mother

Sam King KC and Fiona Munro counsel for the Father

Caroline Little solicitor for the children by their children's guardian

APPROVED JUDGMENT

1. This is my judgment in a fact finding hearing in public law proceedings brought by [a Local Authority]. A is the child of the mother and Z who has not been party to these proceedings. She regards the father as her father. The younger children, siblings B and C, aged 8 years, are the children of both parents.
2. The allegations I have to determine are allegations of sexual abuse made by A against the father extending from shortly after the time the father came into the family until the allegations came to light on 1 July 2022. The local authority also

seeks findings that the mother failed to protect A as A has reported telling her mother about the abuse on two occasions but the mother either not believing her or telling her to tell the father to stop. It further submits B and C are at risk of suffering significant harm. The father denies all allegations of abuse. The mother now wholly accepts A's account of abuse as being true but denies having any knowledge of the abuse until A was spoken to at school on 1 July 2022.

3. Ms Chan of counsel represents the local authority, Ms Joanna Youll of counsel the mother, Ms Sam King KC, leading Ms Fiona Munro of counsel, the father, and Ms Little, solicitor for the children by their Guardian, Katherine Brown. I heard this case between 5 and 11 May 2023. I read a bundle consisting of 585 pages and viewed the ABE interviews of all three children. I had also previously viewed A's interview for the purpose of a Re W hearing. I also received written closing submissions on behalf of the father and the Guardian. At the Re W hearing in January 2023 the issue of A giving oral evidence at the trial was not pursued on behalf of the father and in the end there was consensus that the parties should agree questions to be put to A in a video-recorded interview conducted by the children's solicitor/counsel. In the event A refused to participate in any further interview.
4. I heard oral evidence from the following witnesses:

Ms D, Pastoral Manager and deputy safeguarding lead at A's School

Ms E, then safeguarding lead and deputy headteacher, now headteacher

Jacqueline Hoffman, social worker

Helena Robson, social worker

Trainee DC Alan Stepkowski-Fellows

DC Julie Jode

The mother

The father

DC Pettersen, who has filed no evidence other than a short MG11 dealing with the father's arrest, has apparently left the Metropolitan Police and was not available to give evidence.

5. The legal principles

I adopt (with some adaptations) with gratitude the helpful summary of legal principles as set out by MacDonald J in **A Local Authority v W (No 2) (Finding of Fact Hearing) [2020] EWFC 68:**

“The legal principles that apply when the court is determining questions of fact are now well established and can be summarised as follows:

- i) The burden of proving the facts pleaded rests with the local authority.*
- ii) The standard to which the local authority must satisfy the court is the simple balance of probabilities. 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 (Re B [2008] UKHL 35 at [15]).*
- iii) Within this context, there is no room for a finding by the court that something might have happened. The court may decide that it did or that it did not (Re B [2008] UKHL 35 at [2]).*
- iv) Findings of fact must be based on evidence not on speculation. 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)).*
- v) In determining whether the local authority has discharged the burden upon it the court looks at what has been described as ‘the broad canvas’ of the evidence before it. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence (Re T [2004] 2 FLR 838 at [33]). However, the concept of the broad canvas is not an excuse for forensic laxity. Wide as it is, the canvas surveyed must still be comprised of threads of relevant admissible evidence.*

- vi) *The evidence of the parents and carers is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them.*
- vii) *It is also important when considering its decision as to the findings sought that the Court take into account the presence or absence of any risk factors and any protective factors which are apparent on the evidence (see Re BR [2015] EWFC 41). These, however, cannot be determinative by themselves.”*

6. I do not give myself a Lucas direction as the issue is whether to believe the child or the father (or the mother) on the central issue – see **paragraph 57 of Re A, B and C (Children) [2021] EWCA Civ 451**. Nor did any party suggest such a direction was necessary.

7. Ms Chan referred to **Re S (A Child: Adequacy of Reasons) [2019] EWCA Civ 1845**, a case involving non-accidental injuries and two potential perpetrators. At paragraph 3, Peter Jackson LJ stated that the questions for the judge were, (1) whether the injuries were inflicted as opposed to being accidental? (2) if inflicted, who had the opportunity to cause them? (3) could one person be identified as the perpetrator? In **F and G (Children)(Sexual Abuse Allegations) [2022] EWCA Civ**, also referred to by Ms Chan, the Court of Appeal made clear that this framework is not necessarily applicable to every case of child abuse and I do not consider it is necessarily the right framework in this case where the issue is whether the local authority have proved A’s allegations against the father are true.

8. Ms King KC cited the important guidance given by MacDonald J in **Re P (Sexual Abuse – Finding of Fact hearing) [2019] EWFC 27** which I set out here in full:
“1245. In circumstances where there is a wealth of guidance for professionals and the police, it is not appropriate for this court to reinvent the wheel or burden those tasked with dealing with this fraught area with further detailed instructions. [...] That said, it does appear that the following “lessons” bear repeating as the foundation of rigorous forensic investigation by professionals and police of allegations of child sexual abuse. I venture to suggest that whenever a referral is received in a case that raises allegations of sexual abuse the social worker or

police officer allocated to the case should, before they do anything else, pause and remind themselves of the following checklist of ten cardinal principles:

- i) The investigation of child sexual abuse is a demanding, complex and sensitive task and should be undertaken by those who have received the requisite training.*
- ii) Very great professional care is required when dealing with allegations of child sexual abuse, both in the initial phases and at the ABE interview stage.*
- iii) Whatever the nature of the child's presentation, and whether the response is immediate, prompt or deferred, the response of professionals and the police must be planned. Children's best interests are rarely served by precipitate action.*
- iv) The primary principles governing, and the procedures for the investigation and assessment of alleged child sexual abuse are those set out in Achieving Best Evidence 2011 and Working Together 2018 and must be followed in all cases.*
- v) Any investigation into child sexual abuse that focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable, or if the child's primary caretaker is unreliable.*
- vi) All interactions with a child who is making or appears to be making an allegation of child sexual abuse have the potential to influence that child's memory.*
- vii) Accounts given by children are susceptible to influence as the result of bias or preconceived ideas on the part of professionals and police. Those speaking to children who have made allegations of sexual abuse must keep an open mind with respect to the allegations made and must guard against the development of bias or preconceived ideas. A professional who loses their objectivity ceases, by definition, to act professionally.*
- viii) Questioning the child should ordinarily be left to a formal ABE interview. If any initial questioning is necessary, it should be limited to eliciting a brief account of what is alleged to have taken place; a more detailed account should not be pursued at that stage.*
- ix) Anything the child says must be recorded in a note that must detail (a) the timing, setting and people present, (b) what the child says in the words used by the child (avoiding summaries of the account in the interests of neatness or*

comprehensibility and avoiding recordings of the adult's interpretation of what the child said), (c) a full note of the actual questions asked (if any) and (d) what was said by anybody else present.

- x) *Overall, the proper methodology is one that combines listening to the child and taking them seriously with an open-minded approach that takes account of both sides of the story, is open to new evidence that disconfirms original ideas, that reasons dispassionately, that demands that claims be backed by evidence and that deduces and infers conclusions only from available facts. 1246. [...].*

1247. It is the expectation of the courts, and the collective expectation of society as expressed through the laws passed by a democratically elected Parliament, that allegations of child sexual abuse will be investigated in an assiduously open minded, procedurally fair and forensically rigorous way. A focus which accords from the outset primacy to the allegation is antithetic to that end. Where the law requires, and will continue to require, proof to a defined standard, derived from admissible evidence, before making findings or pronouncing guilt, such an approach also does a manifest disservice to those who have experienced the pernicious tragedy of sexual abuse, as well as undermining more widely the principle of due process that is a bulwark of a fair and just society.”

9. Ms King and Ms Munro submit that many, if not all, of these guidelines have been breached in this case. They say that the flaws in the investigative process and breaches of the guidelines are so serious that the allegations have been contaminated to the extent the court cannot safely rely upon them. Other parties concede that the investigation was imperfect in a number of respects but argue that the evidence in support of the allegations against the father is nevertheless compelling and can be relied upon.

10. The background

The mother was born and raised abroad. She worked as a general nurse prior to coming to the UK in 2005. She qualified as a nurse to work in the UK and now works part-time as a sister. She had previously been married to Z, a Romanian man, which relationship had ended when A was a few months old. The father left his

home country in 2009 and moved to Scotland with his wife and children. They separated a few years later and his wife and family moved back to their home country. He still communicates with his children by phone. The mother fell pregnant in 2014. During the relationship the father was working as a handyman but for a few months before July 2022, he secured employment as a care worker with the elderly. Since these events came to light his employment has been terminated.

11. A has alleged that the father began to abuse her sexually from about 2015 and this continued on a daily basis from then on. In May 2022 she had a telephone appointment with her GP with her mother present as the latter had been concerned about “*tic*” like movements A repeated to flex or stretch her body which she reported she needed to “*balance*” herself and which were beginning to intrude into her school life. There were other behaviours which made the mother concerned she may be developing OCD symptoms.
12. On 1 July 2022, Ms D, Pastoral Manager and Deputy Safeguarding Lead at A’s school was involved in a Team around the Family meeting with the mother of pupil X and a Family Support Worker. Pupil X was a friend of A and her mother reported that she was very concerned about her friend as A had recently told her she was “*being sexually abused by someone she knew.*” The mother of X told the school and subsequently advised the police that she and the child wished to remain anonymous.
13. The Pastoral Manager and Deputy Safeguarding Lead, Ms D spoke to Ms E then Safeguarding Lead and Deputy Headteacher and they then spoke to A together. A told them she was being sexually abused by the father and gave further details of the abuse. As a result a referral was made to the local authority. Later in the day, following a strategy meeting between the police and Louise Whiting, a team manager, two social workers, Ms Robson and Ms Hoffman, attended the school as part of joint section 47 investigation to speak to A with two police officers. DC Pettersen, a CAIT officer and trainee DC Stepkowski-Fellows who was then a member of the Community Support Unit and was acting as “*backfill.*” The CRIS report notes “*When a joint enquiry takes place, the police have the lead for the*

criminal investigation & LA children's social care have the lead for the S47 enquiries and the child's welfare."

14. It had been agreed Ms Hoffman would take the lead in questioning as the police were concerned that if they did, it could impact on their investigation. The school had been advised that Children's Services would advise the parents that A would be kept back at school but very unfortunately, this did not happen. The parents, highly anxious about A's whereabouts, reported her missing, attended the school and were kept in reception. The social workers and police arrived at about 6pm, when the parents were still at the school, separate from A. The parents were told that the police and social workers would be speaking to A but no details were provided.
15. The police and social workers then conducted a further interview with A when she repeated her allegations. The police officers then spoke to A in private to ask that she do a VRI interview but she was unsure. There was then considerable delay in waiting for uniformed officers to arrive to arrest the father so a decision was made to split up, with Ms Robson and trainee DC Stepkowski-Fellows going to the family home to speak to the siblings whilst the other two remained at the school to speak to the mother after the father was arrested.
16. The siblings, who were in the care of their aunt, spoke of being tickled in various parts of their body by their father but did not allege any inappropriate behaviour. A decision was made at about 11pm to police protect the children so foster-parents had to be found. In the event the siblings were placed with one family and A with another. The siblings had to be taken to the police station and foster-carers identified. They arrived at the placement in the early hours of the morning. A was taken to a foster-placement at about 11pm.
17. On the next day, 2 July, all three children undertook ABE interviews at their respective foster-placements. The siblings were interviewed separately between about 12.45 and 14.00. A was interviewed between 17.14 and 18.25.
18. Following the ABE interviews, the father was interviewed on 2 July, in the presence of the duty solicitor, commencing just before midnight. He gave a no comment

interview and provided a short prepared statement denying the allegations. He was made subject to bail conditions including not to return to the home or communicate with the mother or the children. These were subsequently ended and the father remained under investigation. A decision was made on 2 July 2022 that the children could return home to their mother the same day. There was a difference of view between the police and social care as the police had formed the view that the mother was not a protective factor and might be colluding with the father or subject to coercive control by him. The CRIS report referred to the fact that on 1 July 2022 the mother was seen to be more concerned about the father being arrested than about her daughter and was behaving in an obstructive way.

19. The local authority issued care proceedings in July and the children were made subject to interim supervision orders which remain in place.
20. The siblings have been having supervised contact to their father for 2 hours on a Saturday. A has had no contact with him but has expressed a wish to see him. The mother has now ended her relationship with the father. She underwent what is described as a Protective Ability Risk Assessment undertaken by Rachel Sensicle, a highly experienced social worker in this field. Having viewed the ABE interview she is convinced A was telling the truth.
21. A has since sought to withdraw her allegations, so that *“things can return to normal”*. I will address the issue of the retractions in more detail later in this judgment. It emerged during DC Jode’s evidence that she has forwarded the papers to a reviewing officer with a recommendation of no further action, likely as a result of A’s retraction.
22. A alleged she had spoken to two friends about the allegations using the Discord app on her mobile phone, which can be used to send messages like WhatsApp. A direction was made by HHJ Sapnara for the police to download any relevant messages using agreed key words, which words DC Jode subsequently expanded upon. A special advocate was instructed by the local authority to view the downloads for relevance. The police identified one trail of messages in June 2022 between a tag name said to be A’s and another person as being of relevance

although the special advocate did not consider they either added weight to or undermined the allegations. As they clearly are not the totality of the messages and others may have been deleted or phone calls or other electronic communications may have taken place in between, Ms King states I should disregard them as providing no meaningful evidence. The local authority and the Guardian submit they are relevant in confirming A's account. I will consider the contents of the download later in this judgment.

23. The first interviews

The ABE guidance

The first interview

“The ABE guidance:

2.6 Some initial questioning may also be needed to obtain enough information to formulate a risk assessment for the witness and to take whatever action is necessary to remove or reduce any risks that are identified.

2.7 In these circumstances, any early discussions with the witness should, as far as possible, adhere to the following basic principles:

a) Listen to the witness;

b) Do not stop a witness who is freely recalling significant events;

c) Where it is necessary to ask questions, they should, as far as possible in the circumstances, be open-ended or specific-closed rather than forced-choice, leading or multiple; Any questions should be focused on investigative issues, as identified in paragraphs 2.5 and 2.6 above, evidential detail regarding the allegation should be avoided as far as possible.

d) Ask no more questions than are necessary in the circumstances to take immediate action;

e) Make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness);

f) Make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation;

g) Fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.”

24. The interview conducted by Ms D and Ms E

Ms D had been involved in safeguarding since 2019 and Ms E for 17 years. Both had had training and annual updates.

25. As stated, the Family Support Worker in the TAF meeting about another pupil initially advised Ms D that A had told pupil X who in turn told her mother that she was *“being sexually abused by someone she knew.”* The mother of pupil X confirmed this and added that A had told pupil X she had told her mother about the abuse but she had not believed her and therefore she had confided in friends.

26. Ms D immediately contacted Ms E and they called A into a meeting. The meeting was not timed. Ms D put it at 30-40 minutes, Ms E at about 15 minutes. Ms D made handwritten notes during the meeting which she subsequently produced. They are not verbatim in the form of questions and answers but most of what A said is in quotation marks in the handwritten notes. The subsequent witness statement is more of an account although it also contains direct quotes from A.

Paragraph 27 abridged:

27. They started the meeting by informing A that they wanted to speak to her about something important but she was not in trouble. They informed her that they had been advised that she had told another pupil she was being sexually abused by someone she knew. They asked A if this was true and, if it was, they wanted to help and make sure she was safe. A became visibly upset and confirmed what they had asked her. In response to open questions A stated that her father has persistently sexually abused her since shortly after he and her mother began a relationship. It happened when the mother was working, and sometimes when the mother was at home in a different bedroom. The abuse had recently been better but was still happening daily and the last occasion was that morning. She described how she had told two close friends and told her mother twice but she hadn't believed her.

28. Once when A had confirmed she had told her friend and once at the end of the interview they thanked her for her honesty and bravery. Ms D was confident she had kept an accurate record. Both witnesses under cross-examination confirmed they were satisfied with the way they had conducted the interview, had been gentle and sought to reassure A and had kept an open mind. Ms E described her as crying and distressed after she stated it was her Dad.

29. The school Safeguarding Policy was produced following the witnesses' evidence. The relevant section reads as follows:

“If a child makes a disclosure to you

If a child discloses a safeguarding issue to you, you should:

- . Listen to and believe them. Allow them time to talk freely and do not ask leading questions*
- . Stay calm and do not show that you are shocked or upset*
- . Tell the child they have done the right thing in telling you. Do not tell them they should have told you sooner*
- . Explain what will happen next and that you will have to pass this information on. Do not promise to keep it a secret*
- . Write up your conversation as soon as possible in the child's own words. Stick to the facts, and do not put your own judgement on it*
- . Sign and date the write-up and pass it on to the DSL. Alternatively, if appropriate, make a referral to children's social care and/or the police directly (see 7.1), and tell the DSL as soon as possible that you have done so. Aside from these people, do not disclose the information to anyone else unless told to do so by a relevant authority involved in the safeguarding process”*

30. Ms King criticises the fact that the professionals continued to refer to the allegations as “disclosures” but as MacDonald J. states in Re P, professionals have continued to do so despite the use of this word being deprecated in the guidance. She is critical of the teachers opening the discussion by telling A they had received information she had been abused rather than asking an open question; also by telling her they were worried about her and wanted to make sure she was safe. She highlights the absence of a verbatim note. She criticises the praise as validating A's account

rather than displaying an open mind. She says, “*the juggernaut had started rolling*” and A has been powerless to stop it. She submits A’s affect was equally consistent with the fact she knew she was telling lies.

31. I accept some of Ms King’s criticisms of the interview by the teachers. Firstly, it is clear they were following the school safeguarding policy to the letter. The policy places the welfare of the pupil first and foremost with the effect that it is not completely aligned with the guidance given in the case law and the Achieving Best Evidence guidelines, such as the need to keep an open mind and not validating the child’s account by repeatedly praising them. I consider that it understandable but not ideal to open the discussion by telling A what they had been told rather than asking an open question about, for example, whether anything was troubling her. Secondly, although I am satisfied the handwritten note was accurate, it was not timed, did not take the form of questions and answers nor did it record the child’s demeanour, other than saying she was distressed. Further, praising the young person could be seen to be simply accepting her account, although it is understandable the teachers would have wanted to reassure A. I note, though, that the second expression of praise was after A had given her account.

32. On the other hand, I found the questioning to be by open questions and I did not consider the questions were excessive or breached the ABE guidelines on first interviews. I would be surprised if the interview took 30-40 minutes as Ms D stated even if it took some time for A to give her account. Ms E is likely to be nearer the mark.

33. The interview by the police and social workers

This took place at the school at about on 1 July 2022. As stated, Ms Hoffman took the lead. She was a senior social worker but was not ABE trained. Notes were taken by Ms Robson, who was then a newly qualified social worker and had not been involved in a case where she was receiving information relating to sexual abuse. There is no evidence from DC Pettersen about this interview. Trainee DC Stepkowski-Fellows was then working in the Community Safety Unit which dealt with domestic abuse and had been called in to accompany the other officer due to resource issues. He did not take a note as he believed this would be intimidating for A but made a statement the

following day. There was limited discussion between the police and the social workers prior to the interview. Estimates of the length of the discussion varied. Ms Robson believed it was 20 minutes to half an hour, Ms Hoffman 10-15 minutes and trainee DC Stepkowski-Fellows, who was “guesstimating” as it was a year ago, 30 minutes to 1 hour.

Paragraph 34 abridged:

34. Ms Hoffman advised A they were there to speak to her about what she had spoken to her teacher about earlier. She was asked if she was worried about something at home and nodded. She said her Dad had been sexually abusing her for years on a daily basis, and the last time was that morning before school. She did not think this happened to her brothers. Significantly when asked what she wanted to happen next she advised her mother wants to marry her father so she just wants it to stop and she will forget about it and they can be a happy family. She was asked if she had ever told anyone and responded she had told two friends and her Mum. She said her Mum had not believed her and told her that if it happens again, to tell him to stop doing it or else she will tell her Mum. When asked how she felt she said she felt relief talking about it.
35. Ms Robson described A as *“very tearful, her eyes looking down to the ground for most of the conversation, very fidgety, very, very upset.”* Both Ms Robson and Ms Hoffman stoutly defended the approach taken under cross-examination.
36. Ms King submits that the second interview should not have taken place at all as the police had sufficient information from the referral from the school to take the case to a formal ABE interview and the local authority to decide whether they should take any action to safeguard and promote the welfare of the child. The passage she quotes in her closing submissions from paragraph 2.43 of the ABE guidance in relation to section 47 in fact refers to the ABE interview itself. As I stated during the evidence, there is an overlap between child safeguarding and a criminal investigation when there is a joint s47 investigation. The ABE guidance refers to the need to read it in conjunction with the guidance set out in Working Together to Safeguard Children in England. In the section dealing with Section 47 enquiries, the guidance states

“Social workers should (inter alia):

“- See the child who is the subject of concern to ascertain their wishes and feelings; assess their understanding of their situation; assess their relationships and circumstances more broadly

-determine the child’s needs and the level of risk of harm faced by the child to inform what help should be provided and act to provide that help.”

37. It would in my judgment be surprising if the social workers decided to take protective action without speaking to the child themselves and forming their own view on risk. The child might, for example, disavow all she had previously said to the teachers. It is certainly my experience in such cases that there is invariably some form of initial discussion with the child when a referral has been made by another agency.
38. Having said that, a number of the criticisms made by Father’s counsel are well-founded. There was no planning prior to the meeting, for example, who was to take notes and the nature of the questions to be asked. The sense was of things happening in a rush, no doubt influenced by the fact that there had been delay in the police arriving. The note taken by Ms Robson was not a verbatim note and there was no record of timings. Ms Robson failed to record the question whether the father had ever had sex with A which appears in Ms Hoffman’s case note and there are minor differences between their case notes and subsequent witness statements. The police officers failed to take any notes although DC Stepkowski-Fellows considered it might be intimidating for the child. In my judgment, Ms Hoffman went beyond what was required by the guidance for an initial interview, namely, to ask no more than necessary to inform the next step. The question whether anything else happened was not in my view a closed question as Father’s counsel asserts but arguably unnecessary at this stage. The following questions, namely whether he had made her do anything to him and whether they had had sex were closed questions. I appreciated Ms Hoffman felt that the latter question needed to be asked because of possible health/evidential implications but these matters were those which should more properly be left to a formal ABE interview. I have no doubt that

Ms Hoffman was well-intentioned and welfare focussed but the guidance is there for a purpose.

39. **The ABE interview**

More commonly the court's concern is that an ABE interview is unduly delayed. In this case events moved very fast. Again the impression is of a rushed process. The police were aware the local authority was potentially proposing to return the children to the mother and they were concerned whether she was a protective factor. There may also have been a need for further information before the father was interviewed and he was in custody. The children had only been placed in emergency placements in the night/early hours of the morning and the siblings were being interviewed by lunchtime in unfamiliar surroundings when they must have been tired and confused. The same applies to A albeit she was interviewed in the later afternoon. Ms King has highlighted the inadequacy of the CRIS report. Again this may have been because things proceeded so fast and 2 July was a Saturday, I know not. The CRIS report contained no reference to A's interview at the school by the police officers and social workers. There was a detailed Merlin report containing full details of the joint interview dated 2 July 2022 but DC Jode did not have access to this before her interview. DC Jode had the initial referral by social care and the CRIS report. She assumed there would have been some discussion at the joint visit to the school. The ABE guidance in fact states it is preferable that the interviewer knows little detail of the incident and the alleged offence (paragraph 2.29) but I would nevertheless have expected her to know that A had been interviewed by police/social workers on 1 July and the broad gist of what was said.

40. The guidance states that a full written record of the planning process should be maintained which is absent. For example, it is not known how A came to give her consent to the ABE interview when she was ambivalent the evening before. DC Jode was asked about the absence of any pre-interview assessment which is mandated by the Guidance, particularly if the child has had no previous involvement with the local authority (paragraph 2.70). DC Jode said that she had only been aware of 3 such assessments in the 4 years she had been at [a police station] because of lack of resources. Ms King was critical of DC Pettersen acting

as interview monitor because she had been present during the previous interview which DC Jode did not see as a problem. Ms King contended her presence *“deprived A of the opportunity to retreat from the allegations.”* I do not accept this contention.

41. DC Jode could not recall if she had met A before she attended the foster-placement. If she had it would have been a fleeting encounter. She was asked about the absence of a rapport building phase in the interview and said there was some brief conversation before the interview when the camera was being set up but A was very quiet and it was decided to progress with the interview. The guidance does state that rapport building may be limited if a witness is anxious to begin their account. However, there was no note produced of this discussion.

42. A was asked to give her account which she did for a short time. She stated her father had been sexually abusing her for years at home when her mother was at work or in another room. She thought her brothers had seen it a few times but that they would not understand what was happening because they were too young. The father had taken to locking the door. It happened daily sometimes multiple times a day, for example, when she was waking up. Ms King has criticised the absence of a free narrative stage. The initial short account was a free narrative but DC Jode then went on to ask a series of open questions to enable her to get more detail of the Friday morning incident. The guidance is not a strait jacket and the time when questions may need to be asked to elicit further detail will vary. The guidance states,

“3.40 During the free narrative phase of the interview most witnesses will not be able to recall everything relevant that is in their memory. Their accounts could, therefore, greatly benefit from the interviewer asking questions relevant to the case that might prompt further recall.”

Paragraph 43 abridged:

43. As the interview progressed specific closed questions were also asked, for example, *“Would you be standing or would he give you any sort of instruction to sit and lay or, can you remember?”* A described that he would touch her private and chest and gave details of what had occurred on the Friday morning. She woke up to find him

touching her inappropriately. The officer then went on to ask more about when the incidents started. Again the questions were open-ended to elicit details. A described how it had been going on for as long as she could remember.

Paragraph 44 abridged:

44. A also volunteered that if she wanted to use her iPad the father would say he wanted to do something first. He would try to make her touch him inappropriately.
45. DC Jode accepted that she had praised A on seven occasions during the interview which she acknowledged was potentially problematic. She said that A was finding it very difficult and she was trying to encourage her.
46. A was able to volunteer that the father would try and undress her when younger but as she got older he just tried to get under the clothes. The officer asked A what other things she remembered him doing which was when A recounted him trying to lick her privates. This was said spontaneously by A. Later she elaborated to say this happened very often when she was younger but since she had started to fight back since she was 10, he stopped when she was 11. Ms King has suggested questions were repeatedly asked to get more and more serious allegations. I agree the officer did ask on several occasions whether anything else had happened. The earlier occasions were in my view justified but by the end the question was inappropriately repeated. A was able to question and then correct the officer when she misheard A saying it happened “*after*” when she in fact said it happened “*often*.”
47. A described it happening in the morning when her mother was asleep, whenever she and the father were alone and when she was sleeping in the bed with her brother who slept in a bunk bed in the parents’ room. She was asked what the father said and replied “*Come on, come on, just one minute. Just one minute and it will all be over.*” She was able to disagree with suggestions such as on being asked “*does he tell you to do anything?*” she replied “*Not – no, after when I was really young, when he tried to get me to touch it, after I fought back, he doesn’t tell me to do anything.*”

Paragraph 48 abridged:

48. A described two particular occasions when she was 11 when she told her mother about the abuse. In relation to the first time she said that her mother was upset with her father and so she saw this as an opportunity to tell her. She told her mother that he had touched her on her chest and private area, and her mother asked if she was lying. A responded questioning why she would lie about something like that, then her mother was silent. A was disappointed with this response, and scared her mother might tell her father.

49. In relation to the second time she said that she was next to her mother in bed, and told her her father was touching her private area and chest, and her mother said to say him if it happens again she will tell her mum.

Paragraph 50 abridged:

50. After these discussions with her mother she recounted how she told one of her friends and then a few months later another friend. She told her first friend on the Discord chatting App. She said “...*after seeing it on like social media, I knew it was called.*” She told her second friend again on the Discord app. This was a few months earlier, quite recently. When asked what made her tell her friend, she stated that she was becoming more open with them, and had seen a video of someone explaining sexual abuse which made her feel angry and upset and so she wanted to talk to someone. The friends’ response was to say how this was terrible and hoping it stopped.

51. The questions which begin at G83 initially seek to summarise what A has told the officer. She told the officer that the incidents have got a bit less frequent since she got older and became more aware and started fighting back more. A is asked whether he has done anything else and replies: “*Not anything I can remember.*” However, the officer then seeks to ask further new questions such as whether the touching below had been painful which A confirms it is sometimes.

Paragraph 52 abridged:

52. DC Jode then asks whether he has tried to put part of his body inside and A confirmed he had not.

Paragraph 53 abridged:

53. When asked if he has ever said anything about telling anybody, she confirmed that he told her not to tell anyone, because he would go to jail. This made her feel guilty.

54. The final time the officer asks A if anything else has happened she shakes her head. She spoke about being scared of Sundays as her mother would be working and so he would abuse her on Sundays.

55. Towards the end the officer introduces the question of whether she had been injured. A refers to a time when this occurred and she initially mistook it for her period. Right at the end when asked how she feels she says:

“Well, I was, I was really angry at him whenever I thought about it, and I kept on thinking, like, I'm going to tell someone and then you're going to go to jail, and then you'll see.”

56. A's demeanour

A's demeanour was very similar to that described by the social workers doing the joint visit. She was plainly extremely uncomfortable, embarrassed and distressed. For much of the time she looked down towards the floor. She was virtually continuously playing with her hands including with a rubber band and her legs were shaking almost continuously in a highly visible way, such that it initially appeared to me that there was a flaw in the recording. She was nevertheless fluent and spontaneous and responded in an articulate manner, consistent with being an intelligent child.

57. The interviews of the siblings

The siblings were spoken to by Helena Robson in the presence of trainee DC Stepkowski-Fellows on the Friday evening and then gave an ABE interview the next day. At the home B spoke about all three siblings being tickled by their father and pointed to his neck and genitals when asked where. He confirmed it happened a lot, took place over his clothes and he liked it. He spoke of his sister being scared of the dark and how she liked sharing a bed with him. There was no indication he was aware of any inappropriate behaviour towards his sister. C confirmed he was tickled and indicated his tummy, legs and arms. He stated that his sister was tickled when the lights were off. Ms Robson recorded: *“When asked what she does when the lights are*

switched off he said that she comes into the sitting room and her face goes pale.” The CRIS report refers to the siblings making similar disclosures to A, albeit less serious in nature, which is somewhat of an overstatement.

58. The siblings’ ABE interviews

C spoke of his father tickling him in the same places as he said to Ms Robson and described being happy about it. He referred to A sleeping with him sometimes. He said nothing of any significance.

B also described the tickling again and pointed to the neck and genital area. He also described tickling on the tummy and armpit. He described it as making him laugh. He described A sleeping with C because he was scared of the dark. He too said nothing of significance.

59. The retractions

Ms Little, the solicitor for the children has summarised all relevant conversations in her written closing submissions. A young person seeking to retract his or her allegations in these cases is far from uncommon in my experience and there may be a variety of possible reasons for doing so. Ms Little highlights a thread running through the conversations with professionals right from the start on 1 July that A wanted to preserve her family unit but simply wanted the abuse to stop. In July 2022 however, she told Ms Hoffman at school that she felt happier and safer that her father was not there. In August 2022 she told her original Guardian that *“it had been going on for so long”* and she just wanted it to stop. In October 2022 the guardian visited A for the purpose of her Re W analysis and explained the options about her giving evidence or not. A understood that if she did not give evidence there was a greater chance the father’s account might be believed and he may even come home. *“A explained she had told someone at school because she wanted the abuse to stop but not because she wanted her stepfather to leave...A’s real hope that all of this could go away and that her stepfather could return home and that everything could go back to normal, without the abuse continuing.”*

60. A first discussed retracting with a duty social worker in December 2022. In January 2023 she told her current social worker, that she did not choose for this to happen,

her friend told the school. She had not wanted her friend to tell others. She said she felt retracting was better than doing nothing, even if it did not work. In February 2023 she expressed concern to the social worker that if she said it was true but wanted to take it back, nothing would change. She confirmed that it was true, however she wished to take it back. She wanted no further action and wanted her dad to come home and if that couldn't happen based on her still affirming the truth about what happened, she might wish to say it didn't happen. Her handwritten note refers to everything feeling out of her control, she did not wish this to happen, wanted this to be over and therefore wanted to retract.

61. In February when she met the new Guardian, she expressed similar thoughts saying that if it took saying that she made the allegations up to make this “*go away*” she was willing to do so. In April 2023 at a Child in Need visit she presented as very distressed and said she just wanted her Dad to come home. If the court proceedings and police and social care involvement ended, but he was not to come home, she would not feel better about anything. A handed her social worker a note which indicated she was finding things so difficult, she wanted it to end and therefore was retracting her statement and saying it never happened.

62. The DISCORD app analysis

Ms Little again has prepared a helpful schedule of all the messages which were downloaded in June 2022 between A and her friend. Father's counsel points out that the special advocate did not consider they either assisted or undermined the local authority case although DC Jode saw them as the only potentially relevant messages. Father's counsel emphasised they were partial and that it would be dangerous to rely upon them to support A's account. I take into account that they are partial. If read in isolation they would not necessarily establish a dialogue about abuse but they are consistent with A's account in terms of timing, the fact she had told another friend and what this friend said. I consider they do support her account. For example, her friend says “*I'm so sorry.*” and then “*you don't deserve that.*” “*Is it someone from your family?*” “*have you ever tried telling someone or does someone in your family know? have they ever threatened you if you wanted to*

tell someone?” “I’m so sorry you really don’t deserve this” A responds “Yeh thank you I just needed to tell someone I only told one other person.”

63. The father’s evidence

The father confirms that he has been heavily involved with caring for the children to support the mother when she is at work. He would carry out caring tasks such as bathing and undressing A until she reached puberty. When he had a car when A was in year 7 he would take her to school and pick her up. He says he has always seen A as a daughter and she regards him as her father. He stresses that A has always been a fussy eater and deprecates the social worker’s linking of her being underweight to possible abusive experiences. He refers to a number of obsessive compulsive behavioural traits such as a fear of insects which leads A to leave her bedroom door and the bathroom door open when she is inside to ensure she can leave the room immediately if an insect is seen. A’s room had a latch on the inside. He would therefore be able to abuse her in the bathroom when she was showering but she does not allege this ever happened.

64. He denies any sexually inappropriate behaviour and refers to a tendency in the UK to view as potentially sexualised innocent behaviours such as tickling, in contrast to attitudes in his home country. He and the mother described all three children jumping on the parents’ bed and getting in on Saturday mornings. When at home he would always be with all three children and would not be alone with A without anyone there. When she was younger and he engaged in caring tasks, they would only occasionally be alone. The aunty would always be in her room unless she was cooking or doing something in the kitchen. He denies that anything could have happened in the morning of 1 July 2022 and says he was still asleep when A says the touching occurred. The mother initially supported this account, stating she woke A up that morning while the father was still asleep.

65. He can suggest no motivation for A to make up allegations against him. He told social services that A may have misinterpreted his actions when he was rubbing her back when she had been sick recently and later touched her forehead and put his hand on her stomach. In oral evidence, he referred to conflict arising when he

shouted at her, such as when he prepared food for her as per her request but she did not eat it and would be playing on her gadgets. Being too strict was the only reason he could think of. The children had been instilled with the value of telling the truth. In the end he was constrained to say she had fabricated the allegations.

66. The mother's evidence

The mother referred to the physical tics which led to her making an appointment with the GP as well as other compulsive behaviours such as closing the doors because of fear of insects and fear of the dark. She denied the doctor being told that A had to check her door 50 times a night although this appears to have been recorded by the doctor. She confirmed A had always been a fussy eater. The siblings did not exhibit any of these types of behaviour.

67. The mother has stated throughout she was wholly unaware of any inappropriate sexual behaviour before A's allegations on 1 July 2022. She spoke of the father tickling the children but never observed them to be uncomfortable or being touched on intimate body parts. She accepted that A had told her that she did not always like it when the father tickled her and she told A to tell him to stop when it stopped being fun and that if he did not, she, A, should tell her. She emphasised that her children were always her first priority and she would have taken immediate steps to protect them had she been made aware. She would check A's phone but was not aware the Discord app could be used for chats, which seems to have been many adults' understanding about it.

68. The turning point for the mother was the viewing of A's ABE interview. This convinced her totally that A was telling the truth. The risk assessment report stated:

The Mother "had never seen A so distressed and in her opinion was sure that she was telling the truth in the interview, she said, 'I can see its genuine, you can see she is nervous as well, you can't fake those reactions. She was speaking like she does when she is very nervous.'"

69. Findings and analysis

The father's evidence

The father repeatedly and vehemently denied the allegations and stressed how committed he was to his family including A. Nothing he said added to the case against him. He became quite agitated at different parts of his evidence. However, I find that this presentation is neutral as consistent either with an innocent person being confronted with such allegations or a guilty person reacting under stress. As his evidence consisted largely of denials I have to view such denials against the totality of the evidence against him. In the end for the reasons explained in detail below when analysing the totality of the evidence I find he was lying in his denial of the allegations.

70. The mother's evidence

The mother is a refined and intelligent woman and made an impressive witness. She is plainly a loving mother who wishes to do the best by her children. She appeared genuinely distressed that she had failed to notice anything untoward and her daughter had suffered for so many years. She felt betrayed by her former partner and all this had shaken her self-belief and belief in herself as a good parent. I have already stated during submissions that I do not find that she was more concerned about the father's welfare than A's when she was first presented with the allegations. I find she was in a state of shock as she said. I have already stated during submissions that regardless of any findings I make or do not make about her knowledge, I am satisfied she is now a protective parent.

71. She recognised the dilemma presented to the court by her case in accepting without equivocation A's allegations against A's father but denying what is a detailed account with contextual detail given consistently about her knowledge. I have found this conundrum to be a very difficult and troubling one. Added to this is the fact that this loving mother failed to notice anything amiss in her daughter over so many years. I have considered the evidence of Ms Sensicle that the mother was devastated when her relationship with the Father broke up and how anxious she was about caring for a child and providing for them both. Could this have meant that she was desperate not to suffer a second breakdown of the family unit when she now had three children to care for?

72. Ms Youll understandably places great weight on the positive report of Ms Sensicle.

Ms Sensicle stated at para 65:

“She said, ‘it is not anything I’d have expected from him, I trusted him.’ [the Mother] stated that she was ‘devastated’ and added, ‘it’s the most awful thing, sexual abuse of a child’ and added, ‘physical I see it but’ and appeared entirely horrified by the concept that her daughter had been sexually harmed and she had not noticed anything.”

She later stated to her:

“I’m shaken to my core. I don’t know myself any more.”

73. Ms Youll relies in particular upon paragraph 105:

“A will say that she tried to tell her mother about the abuse. It is often the case that children will give tester, or brief indicator of abuse occurring to establish what the parents’ response will be. A might not have been sufficiently clear or obvious in what she said to capture her mother’s attention, particularly as her mother would never have imagined sexual abuse was occurring in her own home. The disclosure would need to be rather obvious to her for her to have taken notice. It might be that A in fact said sufficient to her mother, but [the Mother] did not understand the seriousness or gravity of what was occurring and so did not respond appropriately. I do not get the impression that [the Mother] received a full disclosure from A, as I believe [the Mother] would have reacted to that. I got the impression that [the Mother] is hugely regretful that she did not take more notice of her daughter and asked more questions of her.”

74. Ms Youll also made the good point that a mother who did not want her daughter to reveal would have been unlikely to make an appointment with a GP which might have led to therapeutic work with A and the risk A would reveal the abuse in that therapy.

75. In the end by a very fine balance I have come to the conclusion that when A tried to tell her mother about the abuse she did not spell it out explicitly and that her mother did not follow up with A as much as she should, given what I find would have been

A's evident discomfort. I find this mother is likely to have been preoccupied by a responsible and high stressful job, the demands of parenting three children and being the main wage earner. She could and should have enquired further but failed to do so. In making this finding I do not find she understood her daughter to be complaining of sexual abuse, rather that she should have explored her discomfort further. Therefore I do not find a failure to protect but rather a lack of sufficiently curious and attuned parenting.

76. Factors going against the veracity of the allegations

77. First and foremost I remind myself that the evidence in support of the allegations is wholly hearsay and the father has had no opportunity to challenge it by cross-examination.

78. Secondly, this is a family which has had no previous social work involvement and, as Ms King put it, the father is of unblemished character.

79. Thirdly, Ms King relies upon the fact that the initial allegations were not made by A but by a third party.

80. Fourthly, Ms King relies heavily upon the flaws in the investigation which I have addressed in detail in this judgment. Many of her points are well made. I have addressed the initial interviews at the school by the teachers and then police/social workers earlier in my judgment. In my judgment, the ABE interview suffered from a lack of pre-planning and forethought. Whilst I appreciate the pressures to get the interviews done quickly for the reasons discussed above, nevertheless to interview a young person when she had been removed from home and not placed until late the previous night was sub-optimal and not child-focussed. The lack of pre-planning was evident in the way the officer would move from topic to topic, for example, she introduced the question of telling her mother on two separate occasions, instead of following it up fully on the first. Further when she appeared to have got to the stage of recapping A's account with her, she then reverted to introducing new matters, for example, whether the fingers were outside or inside A's privates and whether she had bled. The questioning at this stage also tended to be forced-closed.

81. Ms King suggests A's distressed demeanour was consistent with a compliant young person telling lies when she had been overborne by the authority figures making powerful suggestions to her.
82. The abuse was said by A to have taken place over several years in a small flat. If I accept the mother's account, the likelihood of her not noticing anything is surprising, not least because she is a caring mother. Further, A has described the father touching her when she was in bed with one or the other of the siblings in the same room as the mother which would represent highly reckless behaviour on his part.
83. Ms King also highlights a number of inconsistencies in A's account at paras 36 to 42 of her written submissions. For example, she refers to the limited opportunity the father would have had on 1 July 2022 before she left for school yet A refers to him touching "*behind me or stuff like that, because I was wearing a skirt.*" There were also different accounts about when the licking stopped. A's door also had a lock. However, she gives a lock as one of the reasons why the father abused her in the parents' bedroom.
84. The retractions: not only has A sought to retract the allegations, but she has expressed her wish to see the father and that he could come home, which her mother finds very puzzling.
85. The father's reactions were described by Ms King as being "*appropriately animated by the allegations he was facing.*" I have already found that his agitation is a neutral finding and is equally consistent with an innocent party being faced with such allegations as a guilty person becoming agitated at being pressed with them.
- 86. Factors supporting the veracity of A's account**

Firstly, what I do not find: I do not make a linkage between the behaviours A displayed or her poor eating with the abuse as I consider there is insufficient evidence to make such a linkage. I regard Cs comments in his ABE interview about A going into the sitting room and going pale as ambiguous. I have already commented upon the father's agitation in evidence.

87. Turning to the factors supporting A's account, the father had, in my view, ample opportunity to abuse A. He was the main carer when the mother was at work until shortly before the allegations surfaced and the aunt also worked outside the home.
88. There is no conceivable motive for A fabricating the allegations. Ms King submits a finding as to motive is not a necessary element of my findings and that human nature can be inscrutable and motivation opaque. However, as a matter of common sense and logic, the court seeks to understand if there are any reasons for a young person making such serious allegations. I note that there is no pseudo-burden on the father to put forward a possible motive.
89. The theme which runs through A's account is that she did not want to disrupt family life but simply wanted the abuse to stop. This is consistent with her reporting the allegations to friends and not wanting the authorities to know.
90. Her retractions are part and parcel of the same thinking by A. Further as Ms Sensicle pointed out to the mother, there must have been parts of the father/daughter relationship which were good and explain why A is missing him and wanting him to return home. In my judgment, A also felt guilty about depriving her mother and brothers of their valued relationship with the father and upending family life. All this points powerfully against the allegations being motivated by spite or vengeance.
91. Further, there is no evidence before the court that A is other than a truthful young person. She is also intelligent and articulate.
92. In order to determine whether the deficiencies in a particular part of the investigation or the cumulative effect of the deficiencies taken together undermine the integrity of the allegations, the court must stand back and analyse the totality of the evidence. A's account from the very first allegations has been remarkably consistent. The inconsistencies pointed out by Ms King, such as not remembering exactly when the licking stopped, are understandable given the difficulties in recalling when a particular form of abuse stopped when the abuse was part and parcel of daily life. The incident on the morning of 1 July could have occurred

earlier before the mother woke up as she now concedes. The description of the father doing it when she was in bed with her brother in the same room as her mother could be seen as lacking credibility with the father taking a risk of this dimension but perpetrators often engage in risk-taking behaviour.

93. The content of her account in many respects points powerfully and compellingly to the truth of what A was saying. Her account was largely spontaneous in my view. Further it had a high degree of internal plausibility, consistency and logic. Coupled with this are idiosyncratic details which convey a powerful sense of truth and which would be difficult for a child of A's age to have the emotional maturity to fabricate. Firstly, there is the evolution of her understanding of what was going on. A referred initially to not understanding what was happening. *"I just thought he was like having fun."* She described the development of the father's behaviour as she grew older and more able to challenge him. He stopped trying to undress her as she physically resisted him and resorted to touching her under her clothes. For similar reasons he stopped licking her private parts. She describes her father initially telling her she must not tell as he would go to jail and be with bad people but as she got older he would simply relied upon her apparent inability to speak out and that he had got away with it for so long.

94. There is the idiosyncratic detail of withholding the iPad until she complied and saying it would be over in a minute. There is the detail of him licking his fingers before putting them down her private. There is the poignant description of dreading Sundays as she knew the inevitability of what awaited her. The description of feeling guilty even though he was the abuser is a frequent feature of a victim's account. The description of seeing sexual abuse information on social media as triggering her to tell and the increasing anger she felt as she grew older and appreciated the wrongness of what was happening to her is highly persuasive. There is the absence of any sense of exaggeration. The interview has been aptly described as compelling and harrowing.

95. I find A's demeanour as being consistent with a young person having unwillingly to describe deeply distressing and embarrassing matters and not as someone who is distressed because she knows she is lying.

96. I find the fragmented Discord messages support A's account both of when she told her friend and her friend's reaction.
97. I do not find that the first interview "*set the juggernaut rolling.*" A responded to the opening question without hesitation. I do not accept the presence of two authority figures and/or the nature of the interview would have caused A simply to acquiesce by telling a gross lie from the off. Having seen and heard them, I consider that the teachers would have come across as reassuring rather than intimidating. I have the same view about the second and the ABE interview. Thus despite the deficiencies which I have found, the compelling nature of the evidence overall means that they do not undermine the fundamental veracity of A's account. Ms King has asked me to consider whether some of the allegations which were made in response to closed questions can be proved. I have considered this carefully and am satisfied that none of the account was made up in response to suggestions. For example, there was circumstantial detail given in relation to the bleeding.
98. Finally, there is the mother's unequivocal view that her daughter, whom she knows better than anybody, is telling the truth. My approach to this factor is to form my own independent view on the evidence. However, the mother's own view fortifies me in the conclusions I had already firmly reached.

Paragraph 99 abridged:

99. **The Schedule of Findings**

I do not find the Schedule of Findings as presently drafted helpful, for example, it repeats the same allegation a number of different ways.

100. My findings may be summarised as follows:

The father started to abuse A sexually in about 2015/6 shortly after he began a relationship with her mother and continued until A told her school about it on 1 July 2022. The abuse included touching A inappropriately on a consistent, daily basis and sometimes more than once a day, and trying to make her touch him inappropriately. B and C occasionally witnessed this abuse but believed that A was

being tickled. A tried to tell her mother twice, but did not spell it out explicitly and her mother did not follow it up as she should have. A has suffered and was at risk of suffering significant physical and emotional harm as a result of the abuse she suffered. B and C were likely to suffer significant emotional harm as a result of being exposed to her abuse.

101. Finally, I express my gratitude to counsel, especially Ms King KC and Ms Munro, and to Ms Little solicitor for the children for their very helpful written submissions.

Dated 22 May 2023